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ABSTRACT

Presented are charts detailing due process provisions in special education (effective April 1976) for the 50 states and the District of Columbia. Data is explained to be culled from administrative provisions of state plans, rules and regulations, guidelines, and due process handbooks. Information is provided for the following aspects: referral evaluation, and placement (notice to parents or guardians, consultation, consent); three different appeal stages (initial appeal, subsequent appeal, and judicial review); and actual due process provisions (prehearing, hearing, and other provisions). (CL)

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DUE PROCESS IN SPECIAL EDUCATION: A LEGAL ANALYSIS

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29 Ware Street, Cambridge, MA 02138, February, 1977

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INTRODUCTION

The due process clause of the Fourteenth Amendment provides that, "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law." The application of the requirements of this clause to the decision-making process in the area of special education through state legislative and administrative provisions is the subject matter of this monograph which comprises two papers and two sets of charts.

In the first paper, "Due Process in Special Education: Legal Perspectives," Lawrence Kotin describes the application of the Due Process clause of the Fourteenth Amendment to the decision-making process in special education, discussing the general meaning of due process and the evolution of its application to special education. The discussion of the development of due process procedures in special education includes a review of the most important developments in the Federal courts, Congress, state legislatures, and state agencies such as departments of education. The final section of this paper deals with state response to Federal judicial and legislative requirements in the area of due process in special education, reviewing current state legislation and regulations and giving an impressionistic overview of the kinds of due process requirements for special education which are being developed by the states.

At the time of writing (1976), the development of state provisions was at a very early stage and it was only possible, using material obtained from states, to indicate general trends which appeared to be developing and highlight unusual or infrequently encountered provisions. This paper serves, then, as an introduction to the background and historical development of due process in special education and examines general trends developing within states in response to Federal statutory and judicial requirements. The paper includes a discussion of issues which will be raised during implementation of a due process system, particularly whether the traditional adversarial model adopted by most states is most suited to the special education context. Important issues for consideration in the implementation of a due process model are raised and briefly discussed and reflections made on the future of due process in special education.

The second paper, "Due Process in Special Education: Legal Perspectives—The State of the States, P.L. 94-142 and Systems Design," is a continuation of the discussion of the first paper. Its purpose is to elaborate further on the due process provisions which the states have incorporated into their special education systems and to discuss the due process requirements in the "Education of All Handicapped Children Act" (P.L. 94-142), relating these requirements to what the states have already done and to reflect upon some of the issues involved. The first section of this paper deals with the response of the states to due process requirements in special education, analyzing and comparing the formal and informal due process requirements in the various states. This comparative overview of due process provisions describes the procedure in two stages: (1) referral, evaluation, and placement, and (2) appeal. The referral, evaluation, and placement section includes a discussion of parent involvement through "notice," "consultation," and "consent" provisions and through other related provisions. The discussion of the appeal stage covers procedures prior to the due process hearing through the acutal hearing. Each of the provisions for parent involvement is described for each state in as full detail as possible.

The second major section of this paper deals with the requirements of P.L. 94-142 which are examined in detail with a commentary on whether those requirements appear to have been satisfied by most of the states, that is, whether there has been minimal formal compliance, at the time of analysis, (Spring, 1976).

The third section of this paper examines issues involved in designing a due process system. These include the issues discussed in the earlier paper and those raised by the due process requirements in P.L. 94-142. The issues are discussed with the purpose of assisting states in the design of special education due process systems which are both fair and educationally sound. Issues examined include parent involvement and what this means, the involvement of the child and its implications, the impartial due process hearing and how this is organized, and the mediation approach as a more informal alternative or additional model. The final section of this paper is a critical evaluation of P.L. 94-142, its requirements, and certain problems of interpretation and implementation.

In addition to these two narratives and as an integral part of the research, two sets of charts have been included. The first relates to the first paper and contains due process provisions in state special education statutes. The second relates to the second paper and contains state administrative provisions for due process in special education. An introduction to the second set of charts describes in detail how they should be read in conjunction with the narrative.

The chart format is necessarily a condensed and abbreviated presentation of information and, in some cases, the standard language on the chart format will not be able to reflect fully the variations in language from state to state used to describe the due process procedures. The information appearing on the charts is derived exclusively from the documents received from each state. The charts do not address situations where there is a variation between the due process system as it is described in the formal documents and as it actually operates.

Therefore, for a complete and precise description of the due process system in a particular state, the above material should be supplemented by reference to the actual documents received from each state. A Resource Book containing these documents—state regulations and guidelines, state plans, and other similar documents—is available upon request from the Research Institute for Educational Problems.

It is critical to stress that these analyses indicate what **should** be in place; this may or may not match the reality of what has actually been implemented. This should not be surprising since so many of these requirements are of relatively recent origin, and these systems require time, energy, and careful thought to put in place.

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DUE PROCESS IN SPECIAL EDUCATION: LEGAL PERSPECTIVES

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I. THE MEANING OF DUE PROCESS

The Due Process clause provides in relevant part that "no state shall. . . deprive any person of life, liberty, or property, without due process of law." The basic meaning of this clause is that fair procedures must be followed before a state can deny certain "important" interests of individuals.[1] In a substantial number of decisions, the Supreme Court has indicated the kinds of interests which it considers important enough to invoke the protection of the Due Process Clause. The Court has also specified the nature of those protections in various contexts. Those Supreme Court decisions most relevant to this analysis will be discussed in the next section.

Although certain traditional procedural safeguards have come to be associated with the concept of due process, that concept does not have a fixed meaning. As with other personal rights protected by the Constitution, the right to due process is premised upon a normative, philosophical idea – that of procedural fairness – but its practical application requires that it be a flexible concept, adaptable to each new context in which it is applied. Thus, for example, it must be sufficiently flexible to be applied to the diverse interests of individuals faced with a criminal or juvenile accusation,[2] discharge from government employment,[3] suspension from public school,[4] revocation of a motor vehicle license,[5] denial of a welfare benefit,[6] attachment of property[7] or some other loss of an important interest defined by the Supreme Court as within the meaning of "life, liberty, or property."

All of these areas of due process application share three common elements. The first is that the state is taking an action against an individual or class of individuals; the second is that the action of the state threatens to deny an individual's interest in "life, liberty, or property;" and the third is that there is a dispute between the individual and the state concerning the validity of that threatened denial.

The purpose of the application of the Due Process Clause is not to prevent the denial of individual interests by the State. Rather, it is to insure that such denial will occur only after rational criteria are applied in a rational manner to facts which are proved through a process which guarantees to the individual whose interests are threatened, a reasonable opportunity to challenge adverse evidence and to argue that the interest involved should not be denied.

Some of the traditional elements of due process are the right to notice that one's interests are threatened with denial, an opportunity for a hearing on such threatened denial, an opportunity at that hearing to be represented by counsel, to present evidence, to call witnesses, to confront and cross-examine adverse witnesses, to have an impartial decision-maker and to have a specific decision based upon the application of known criteria to the facts which have been proved. In addition, there are a variety of other procedural safeguards which are associated with due process and which apply in specific contexts, such as, the right of an indigent criminal defendant to a free trial transcript for purposes of appeal.[8] The following section describes how, from a legal perspective, the various procedural safeguards guaranteed by the Due Process Clause have come to be applied to the area of special education.

II. THE EVOLUTION OF THE APPLICATION OF THE DUE PROCESS CLAUSE TO SPECIAL EDUCATION

The application of the concept of due process to special education has resulted from a variety of developments in the federal courts, Congress, state legislatures and state rule-making bodies, such as state departments of education. The following discussion will highlight some of the most important of these developments.

A. The Federal Courts

1. Cases in the areas of criminal and juvenile law

The most extensive judicial application and definition of the concept of due process has occurred in the area of criminal law. This is because individuals charged with crimes are threatened with the loss of the most basic, personal rights – "life" and "liberty". In its decisions in the area of procedural protections which must be accorded to

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[1] See, generally, Kirp, Buss and Kuriloff, "Legal Reform of Special Education: Empirical Studies and Procedural Proposals", 62 Cal. L. Rev. 40 (1974).

[2] *Gideon v Wainwright*, 372 U.S. 335 (1963) (criminal proceeding). *In re Gault*, 387 U.S. 1 (1967) (juvenile proceeding).

[3] *Perry v. Sindermann*, 408 U.S. 593 (1972).

[4] *Goss v. Lopez*, 419 U.S. 565 (1975).

[5] *Bell v. Burson*, 402 U.S. 535 (1971).

[6] *Goldberg v. Kelly*, 397 U.S. 254 (1970).

[7] *Sniadach v. Family Finance Corporation of Bay View*, 395 U.S. 337 (1969).

[8] *Griffin v. Illinois*, 351 U.S. 12 (1955).

criminal defendants, including notice of constitutional rights at various stages of the proceedings,[9] counsel,[10] and a transcript of the proceedings for purposes of appeal.[11]

Significant for purposes of this analysis, is the Court's decision in the landmark case, **In Re Gault**[12] that some of the procedural protections guaranteed to adult criminal defendants by the Due Process clause must also be provided to children and youth charged with juvenile offenses. In so ruling, the Court recognized the fact that the authority of the state, based upon the doctrine of **parens patriae,**[13] although broad, was not unlimited. Thus, the Court placed children and youth under the protective umbrella of the Due Process clause for purposes of juvenile delinquency proceedings.

2. Cases involving the substantive rights of public school students

Equally important as a precursor to the ultimate application of the Due Process clause to special education were the decisions of the Supreme Court applying the protections of the First Amendment and the Equal Protection clause of the Fourteenth Amendment to public school students.[14] In **West Virginia State Board of Education v. Barnette,**[15] for example, the Court declared that the protections of the Freedom of Speech Clause of the First Amendment applied to the public students in the schoolhouse. In the later case of **Brown v. Board of Education,**[16] the Court applied the Equal Protection Clause of the Fourteenth Amendment to students in racially segregated public schools. As in **Barnette,** the Court in **Brown** announced a major area of application of the protection of the Constitution to public school students. In a recent case, **Tinker v. Des Moines Independent School District,**[17] the Court reaffirmed its earlier holding in **Barnette** and gave wide scope to the First Amendment protection contained in the **Barnette** decision. Thus, in **Barnette, Brown** and **Tinker,** the Court made it clear that the substantive protections of the First and Fourteenth Amendments applied to public school students in the school environment.

3. Cases involving the procedural rights of public school students

The application of due process safeguards to children and youth, articulated in the **Gault** decision, and the application of specific Constitutional protections to public school students declared in **Barnette, Brown** and **Tinker** converged in the recent decision of the Supreme Court in **Goss v. Lopez**[18], where the Court applied the procedural safeguards of due process to public school students faced with suspension from school. In **Goss,** the Supreme Court gave recognition to a large number of lower federal court decisions of the previous decade, namely, that the threat of denial of an educational opportunity to a public school student through the process of a disciplinary suspension was of sufficient gravity to require the application of the safeguards of the Due Process clause.[19] Specifically, the Court held that a suspension for ten days or less without "procedural due process," was a denial of "liberty or property" within the meaning of the Due Process clause of the Fourteenth Amendment.[20]

The Court was careful to emphasize that the threat of such a "short term suspension," although of sufficient importance to involve the prohibition of the Due Process Clause, was not so serious as to require application of the full panoply of formal due process procedures.[21] Thus, the Court held that in the case of suspensions for ten days or less, the school authorities were only required to give oral notice to the student of the reason for the suspension and to allow the student to respond in an informal manner.[22] The Court specifically reserved decision on whether more formal and extensive procedures would be required by the Due Process clause for suspension periods longer than ten days.[23]

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[9] ***Miranda v. Arizona,*** 384 U.S. 436 (1966).

[10] ***Gideon v. Wainright,*** 372 U.S. 335 (1963). ***Argesinger v. Hamlin,*** 407 U.S. 25 (1973).

[11] ***Griffin v. Illinois,*** 351 U.S. 12 (1955).

[12] ***In re Gault,*** 387 U.S. 1 (1967).

[13] See, e.g., ***Prince v. Massachusetts,*** 321 U.S. 158 (1944) where the Court defined the doctrine of ***parens patriae.*** In general, the Court said, at p. 167, that under that doctrine, "the state has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare."

[14] For purposes of this discussion, the relevant part of the First Amendment provides that "Congress shall make no law. . . abridging the freedom of speech." The relevant part of the Fourteenth Amendment provides that "No state shall. . . deny to any person within its jurisdiction the equal protection of the laws." The quoted part of the First Amendment has been applied to the states as well as to Congress by a series of decisions of the Supreme Court.

[15] 319 U.S. 624 (1943).

[16] 347 U.S. 483 (1954).

[17] 393 U.S. 503 (1969).

[18] 419 U.S. 565 (1975).

[19] Id., at 573.

[20] Id.

[21] Id. at 583.

[22] Id at 583-84.

[23] Id. at 584.

Thus, as in **Gault**, the Court in its opinion in **Goss**, placed limits on the authority of the state under the doctrine of **parens patriae** by requiring specific due process safeguards to be observed by the state in the area of disciplinary suspensions. The Court, however, has not yet ruled on the applicability of the Due Process clause to the threatened exclusion of a student from school for reason of "mental, physical or emotional handicap" rather than for "disciplinary" reasons. Several lower federal courts have ruled on this issue, and some of these rulings will be discussed in the next subsection.

4. Cases involving the procedural rights of public school students threatened with exclusion from public school or placement on the basis of "mental, physical or emotional" handicap

The cases discussed in this subsection are those which involve the exclusion of children from either a public school or a publicly financed education for reasons of "mental, physical or emotional" handicap. Although there have been a number of federal cases litigated on this issue,[24] this analysis will focus, for purposes of illustration, on the landmark consent decrees[25] in **Pennsylvania Association of Retarded Children v. Commonwealth of Pennsylvania**[26] (PARC) and **Mills v. District of Columbia Board of Education.**[27]

The PARC case was a class action brought on behalf of all mentally retarded children in Pennsylvania who were excluded from a public school education because they were determined by Pennsylvania school officials to be "uneducable and untrainable."[28] The **Mills** case was brought on behalf of seven handicapped children who alleged that the Washington, D.C. school board was excluding them from public school and/or denying them a publicly supported education.[29] In both cases, the plaintiffs alleged a denial of rights guaranteed to them by the Due Process and Equal Protection Clauses of the Fourteenth Amendment. In both cases, the federal courts approved consent decrees which acknowledged such denials and specified elaborate procedural protections to govern the placement or denial of placement of the plaintiff-children into educational programs.

Of particular relevance to this analysis are the extensive procedural safeguards provided for by the consent decrees in both cases.[30] With minor differences between them, the Courts required the following procedural protections to be offered to the parents and children prior to the placement or denial of placement into educational programs: 1) notice of the proposed action; 2) the right to a hearing prior to final action; 3) the right to counsel at the hearing; 4) the right to present evidence; 5) the right to full access to relevant school records; 6) the right to compel attendance of, confront and cross-examine officials or employees who might have evidence on the basis for the proposed action; 7) the right to an independent evaluation; 8) the right to have the hearing open or closed to the public, at the option of the parent; 9) and the right to an "impartial hearing officer."[31] In addition, the decrees required that the hearings be held at a place and time convenient to the parents, that the hearing be recorded, transcribed and made available to the parents, upon request; and that the decision of the hearing officer contain specific findings of fact and conclusions of law.[32]

In summary, the consent decrees in **PARC** and **Mills** provided for extensive and detailed procedural safeguards to protect the rights of children being classified on the basis of mental, physical or emotional handicaps. Most of these safeguards are familiar to courts and have been applied in other contexts. Others, such as the right to an independent evaluation and the right to access to school records, are of particular relevance to the public school setting.

The basic elements of due process delineated in **PARC** and **Mills** gradually began to be recognized in other states through federal court decisions or through state legislation, but the great impetus for the application of due process to special education came through the requirements of federal legislation which will be discussed in the next subsection.

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[24] See, generally, Abeson A. and Bolick, N., ***A Continuing Summary of Pending and Completed Litigation Regarding the Education of Handicapped Children,*** Council for Exceptional Children, No. 8 (1974).

[25] A consent decree is an agreement between the plaintiffs and defendants which has been approved by the court. Thus, in cases resolved through agreement, the court does not render a "decision" but merely approves the agreement. For this reason, some judges will not accept consent decrees as formal precedents.

[26] 343 F. Supp 279 (E.D. Pa., 1972).

[27] 348 F. Supp 866 (D.D.C. 1972).

[28] 343 F. Supp at 282.

[29] 348 F. Supp at 861.

[30] 343 F. Supp. 279 at 303-305; 348 F. Supp. at 873-876.

[31] Id.

[32] Id.

B. Congressional Action

On November 29, 1975, President Ford signed the "Education of All Handicapped Children Act"[33] which applied the major procedural safeguards articulated in **Mills** and **PARC** to all states which wished to receive federal funds under the Act. Since the Act is a major potential source of federal funds for the education of handicapped children by the states, its requirements will undoubtedly be met in every state of the Union.

Of particular importance to this analysis is the Act's state plan requirements relating to due process.[34] Under these requirements, each state seeking funds under the Act must submit to the United States Commissioner of Education a state plan which contains "procedures for insuring that handicapped children and their parents or guardians are guaranteed procedural safeguards in decisions regarding identification, evaluation, and educational placement of handicapped children."[35] These procedures must include many of the provisions specified in **PARC** and **Mills** including provisions for 1) notice to parents or guardians of a change in the educational placement of the child; 2) the right to an "impartial due process hearing"; 3) the right to access to all relevant school records; 4) and the right to an independent evaluation.[36] In addition to being required in the state plan requirements, these basic procedural protections are set forth as mandatory provisions of the Act, itself.[37] In addition to what is described above as being required in the state plan, the Act requires that parents be given the right to appeal to the state educational agency, whenever the initial due process hearing has been conducted by the local educational agency rather than by the state.[38] Furthermore, the Act specifies the detailed format of the "due process hearing" requiring that any party to the hearing shall be accorded:

> (1)the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respec: to the problems of handicapped children,(2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses, (3) the right to a written or electronic verbatim record of such hearing, and (4) the right to written findings of fact and decisions. . .[39]

Finally, the Act provides for review of final administrative decisions "in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy."[40] Thus, the Act establishes a basis for cases of exclusion or misclassification of students on the basis of "mental, physical or emotional handicap" to be heard by the federal as well as the state courts.

The cumulative effect of the federal litigation and legislation described above is a great deal of activity at the state level in requiring local educational agencies to implement due process procedures in their special education programs. This activity at the state level will be discussed in the next section.

III. STATE RESPONSE TO FEDERAL JUDICIAL AND LEGISLATIVE REQUIREMENTS IN THE AREA OF DUE PROCESS IN SPECIAL EDUCATION

At the time the "Education of all Handicapped Children Act" was signed into law, the Council for Exceptional Children estimated that twelve states had legislation containing references to due process requirements in special education and that thirteen states had regulations containing such requirements.[41] A review of current state legislation and regulations reveals that twenty-three states now have statutory special education due process provisions[42] while virtually every state has due process requirements for special education specified in state regulations, binding state plans submitted under the "Education of All Handicapped Children Act," state guidelines or proposed regulations or guidelines which are in various stages of the state administrative process.[43]

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[33] P.L. 94-142, 20 U.S.C. §1411 et seq. (Sup., 1976).

[34] Id., at §1413.

[35] Id.

[36] Id.

[37] Id., at §1415.

[38] Id.

[39] Id.

[40] Id.

[41] "State Policy Regarding Due Process and Mainstreaming", Council for Exceptional Children (Oct. 1, 1974).

[42] A chart on state statutory provisions for due process in special education is available upon request. These provisions give some indication of the due process systems in each of the states listed, but, in general, must be read together with state regulations, guidelines and state plans in order to provide a full description of the system which is in effect in a particular state.

[43] For purposes of this article, references to the special education

The following analysis will provide an impressionistic overview of the kinds of due process requirements for special education which are being developed by the states. Because these state requirements have been developed so recently and at such a rapid pace, because they are in various stages of completion, and because it is unclear in many states whether or not what has been developed is legally binding or is merely advisory in nature, it has been impossible to secure and to present a precise and detailed description of the special education due process system in each state. For this reason, the following analysis uses the material which has been received from the various states only to indicate trends which appear to be developing and to highlight unusual or infrequently encountered requirements.

A. General Trends

The most typical state system for due process in special education is one which begins with a notice to parents that their child has been referred for an evaluation.[44] Frequently, this notice contains a requirement of parental consent to the conduct of the evaluation.[45] In many states, if the parent refuses to consent, the local educational agency may appeal such refusal to the state education agency.[46] The implication of this appeal right is that the state education agency has the authority to affirm or reverse the parental decision, but the type of state action which, in fact, may be taken, is generally unspecified.

Assuming the receipt of parental consent, the next place where the parent is involved in the typical state system is after a decision has been made by an "evaluation team" of educational and other professional diagnosticians about a proposed placement for the child. At this point, the parent is sent a notice of the decision and of their "due process right" to contest that decision at a formal hearing.[47]

In the usual case, such hearing is provided at the local level.[48] It is typically presided over by a designee of the local education agency. In many states, provision is made for an impartial hearing officer" – i.e., a person who is not an official, employee or agent of the local educational agency which made the original placement decision.[49]

Most states provide for the full range of procedural protections at the hearing. For example, most systems allow the parents to be represented by counsel, to have full access to all relevant school records, to present evidence, to compel the attendance of, confront and cross-examine persons who were involved in making the placement decision and to have the hearing recorded.[50]

The typical state system provides for an appeal to the state education agency from the decision of the local hearing officer.[51] Usually, the scope of review at this appeal is limited to the record that was made at the initial due process hearing, although the state appeals hearing officer is frequently given the authority to require the production of more evidence if the record is inadequate for a decision to be made on the appeal.[52]

Most states provide for the parent to have the child "independently" evaluated prior to the initial due process hearing. Usually, this independent evaluation is available at a state facility or at state expense, although the responsibility for payment is frequently unspecified.[53]

B. Unusual or Infrequently Encountered Provisions

At least one state provides that if a parent refuses consent for the evaluation or for the placement of the child, such refusal is final and the process ends at that point.[54] It is unclear from the provisions of this state what happens to the child in this case, particularly in situations where the referral was made by a teacher or other school employee.

Relatively few states provide for parent involvement in the decision-making process between the time of referral of the child for an evaluation and the placement decision by the evaluation team.[55] Some involve the parent in the placement decision, requiring parent presence at meetings when

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due process provisions in the various states will not differentiate between statutes, regulations, guidelines or state plans. Rather, the reference to a state system of due process in special education or to a particular part of that system will be a composite reference to the combined effect of the various sources from which the information was derived.

[44] E.g., Mass., N.J., N.D., Okla., Ore., Pa., S.D. and Va.

[45] E.g., N.D., Okla., S.D., Tenn. and Va.

[46] Iowa, Okla. and Wash.

[47] Most states provide for this post-decision notice.

[48] E.g., Kan., Md., Mich. and N.J.

[49] This is a provision which is common to most states.

[50] Id.

[51] E.g., Kan., Md., N.D., Okla. and S.D.

[52] This is a provision which is common to most states which begin with a local hearing and provide for a subsequent appeal to the state education agency.

[53] This is a provision which is common to most states.

[54] E.g., La.

[55] E.g., some states which do have such provisions are: Ariz., Mass., Mich. and N.D.

such decision is to be made.[56] At least one state requires involvement of the child.[57]

At least one state appears to have a one-tier administrative system with a single due process hearing and a subsequent appeal to court.[58] At least one state has a two-tier system with the first level being the state and the second a commission composed of parents and professionals.[59] At least one state gives the parents the option of an initial due process hearing either before a hearing officer appointed by the local educational agency or before a mediator appointed by the state educational agency.[60] In either case, the parent has a subsequent right to appeal to the state educational agency.

At least one state provides for two routes of appeal – one from placement decisions by local educational agencies and the other from placement decisions by non-public school "human resources" agencies. In the former case, the appeal is to the state educational agency; in the latter case, the appeal is to the state secretary of human resources.[61]

Some states provide that both the initial hearing and any appeal from the decision at that hearing be full due process hearings.[62] Thus, in those states, the appeals hearing officer conducts a complete hearing as a basis for reviewing the earlier decision. It is not specified in these states whether the record of the initial hearing can be admitted into evidence at the subsequent hearing.

None of the state provisions which were reviewed provide that parents receive, as part of the notice of a proposed placement of their child, a list of the names of agencies where free legal counsel can be obtained for purposes of representation at the due process hearing. Also, no state provides for public payment for lawyers or other advocates representing parents at due process hearings.

C. Conclusion

The due process provisions which have been developed by the states to meet federal statutory and judicial requirements are most notable because of their similarity to each other and their adherence to the traditional, judicially-created due process model. The basic elements of the due process systems of most states are an initial notice that a process has begun; a subsequent notice that the process has been completed; an opportunity for a formal "due process hearing;" and a right of appeal from the decision rendered at that hearing. The contents of the notices and the nature of the hearing and appeal, with certain exceptions such as the right to an independent evaluation, reflect standard due process requirements.

IV. REFLECTIONS ON DUE PROCESS IN SPECIAL EDUCATION

The application of due process safeguards to the special education decision-making process is a very recent and relatively sudden occurrence. A review of the state statutory and regulatory provisions are in varying stages of development with few having been finally delineated. Thus, very few states have even reached the stage of implementation.

From the provisions which have been developed to date, however, it is possible to speculate about some of the issues which will be raised during implementation. In particular, the principal question which must be asked is whether the traditional due process systems which have been adopted by most states will actually achieve their purpose in the special education context.

For example, most of the systems described in this article stress the formal due process hearing and place little emphasis on parent and child involvement **prior** to the development of a recommendation for an educational placement. Given the importance of the involvement of the parents and child in helping to develop a special education plan, it is critical to determine whether the present approach will result in the most appropriate educational plan, and facilitate long term cooperation between the parents and the school, as service provider; or whether it will heighten the adversarial qualities of a model which already emphasizes those qualities.

The due process model which is being developed by most states does not routinely provide for informal discussion mechanisms for the resolution of differences of opinion between the home and school. Considering the high degree of qualitative

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[56] E.g., Mass. and N.D.

[57] Mass., if the child is 14 or older and if the child is younger than 14, such involvement is at the discretion of the evaluation team.

[58] R.I.

[59] Mass.

[60] Conn.

[61] N.C.

[62] E.g., Kan. and N.C.

and subjective decision-making involved in a typical special education situation the usual due process model seems poorly adapted to arrive at a decision which is either rational and/or generally accepted by the school, the parents and the child, when serious differences have developed among these parties.

Another issue is whether the systems which are being adopted will provide for a sufficient equality in bargaining power between the school and the parents so that the formal due process hearings will result in an accurate reflection of the merits of a case rather than a reflection of a relative imbalance of power. For example, if a parent at a due process hearing is unrepresented by counsel, will the hearing be a dispute between equals? No states appear to be making any substantial effort to insure that the due process hearing is "fair" in the sense of having the opposing parties begin on an equal basis. Mere notice to the parent of the "right" to be represented is without significance unless the **means** to obtain counsel or an advocate is made available.

A related issue is whether the due process systems which are being developed will be utilized by poor and minority group parents who, traditionally, have the greatest difficulty in participating in and securing the benefits of government programs. There is very little emphasis in any of the state systems on strong efforts to insure the participation of these parents in the special education process. Greater provision for early consultation with and personal notice to parents would remedy this omission to some degree.

It is important to point out that the formal due process safeguards which are required by federal cases and statutes are essential to any state system of due process in special education. The preceding discussion is not intended to cast doubt on the importance or necessity of formal due process safeguards in this area. Nevertheless, it should be recognized that these safeguards are **minimum** requirements and need not define the outer limits of a state system. In fact, there is a great deal of room for **adding** to the requirements to insure that the decision-making process in special education is not only "fair" in a legal sense, but rational in an educational sense. In addition, mandating formal procedural safeguards is not sufficient. These safeguards must also be guaranteed through a system which insures both parent involvement and parent equality in the bargaining process.

DUE PROCESS IN SPECIAL EDUCATION: LEGAL PERSPECTIVES–

The State of the States, P.L. 94-142 and Systems Design.

Lawrence Kotin, Esq.

I. THE RESPONSE OF THE STATES TO DUE PROCESS REQUIREMENTS IN SPECIAL EDUCATION

A. Introduction

As indicated in the previous article mentioned above, due process has been applied to special education primarily as the result of litigation and subsequent Congressional action which incorporated the requirements established by litigation into federal statutory requirements which are prerequisites to the receipt by the states of federal funds for special education. This combination of litigation and congressional action has produced due process requirements which are in the traditional legal mode, i.e. which emphasize the formal, adversarial procedures characteristic of courts and state administrative agencies. These traditional due process requirements, however, have been supplemented in many states by traditional educational requirements for informal involvement of the parent and, less frequently, the child in the special education process.

The most characteristic state due process system, therefore, is one which emphasizes formal adversarial procedures but provides for a degree of informal discussion and consultation between the parent and school officials. To fully describe this legal and educational hybrid, the following discussion will analyze and compare the formal and informal due process requirements in the various states.

B. Methodology

For purposes of analysis, we have divided the special education decision-making process into two principal stages: 1) referral, evaluation and placement; and 2) appeal. Within each stage, we have included a number of categories and subcategories designed to describe, as fully as possible, the components of due process at each stage. The referral, evaluation and placement stage has been divided into four major categories of parent involvement: "notice", "consultation", "consent" and "other areas".

The notice category includes the information contained in notices to the parent. Notice is considered a form of parent involvement in the sense that the parent is provided with some awareness of the nature of the process.

The consent category is a very specific one which describes those parts of the process where parental consent is required. The consent required is a direct form of parent involvement since it necessitates direct parent participation. Like the consent requirement, the various consultation requirements constitute a direct form of parent involvement, since the consultation requirement requires a meeting between the parent and school officials.

In addition to parent involvement through notice, consultation and consent requirements, there are a number of other types of parent involvement, less subject to generalization, such as the right of parents to have their child evaluated independently of the school evaluation or the right of the parents to review school records.

The appeal stage has been divided into three different categories: initial appeal, subsequent appeal and judicial review. These categories are designed to reflect the chronological sequence of events once the parent and school system are in disagreement about some aspect of the special education process, such as whether a referral, evaluation or placement should be carried out.

For both the referral, evaluation and placement stage and the appeal stage, subcategories have been developed based upon the information received from the states in response to requests for documents which describe their due process systems. An effort has been made to include enough subcategories so that each state's due process system could be fully described. The response from the states was virtually complete with only three states not responding (Mississippi, New Hampshire and New Mexico). The following analysis of the provisions in the states will begin first with some general impressions and continue with more specific ones.

C. General Impressions

1. The referral, evaluation and placement stage

Most of the states have specific due process requirements defined at the state level. Three states[1] have established a general due process requirement at the state level but appear to leave the detailed definition of that requirement to local school systems. Several states[2] have minimal provisions at the referral, evaluation and placement stage with no indication of any delegation of authority to the local level. Thus, approximately forty states have specific due process requirements defined at the state level.

Most states provide for formal notice to the parent at some stage of the special education decision-making process. In approximately half the states this occurs at a point prior to the commencement of an evaluation or to the development of a decision regarding educational placement. In the remainder, the notice is provided only after the evaluation has been completed and an educational placement decision has been made. This approximate division of states, however, must be qualified by the fact that in a number of the states which provide the later notice, there are requirements for parent consent or consultation at an earlier stage in the process. Thus, in comparing two states with notice requirements at different stages, a later notice does not necessarily mean later parent involvement in the process.

Approximately half of the states have consent requirements which must be met prior to the commencement of an evaluation or a part of an evaluation. All states require parent consent to the placement decision. This placement consent requirement is usually phrased in terms of acceptance or rejection of the placement decision or the evaluation procedures which were the basis for that decision, or in terms of the right to appeal, or some combination of these.

Most of the states provide for informal consultation between the parent and school officials, frequently in addition to notice and consent requirements. The purpose of these consultation requirements varies from state to state and includes explaining the procedures described in the notice, gaining parent consent to an evaluation or trying to secure a reversal of a previous denial of such consent. The consultation provisions, therefore, are frequently related to the notice and consent requirements.

In most states, there is no indication that parents are provided with a specific **notice** of consent or consultation requirements. The nature of the consent requirement, however, is such that it must be communicated if consent is either to be given or withheld. Presumably, therefore, notice of the right to consent is communicated in some manner. Failure or inadequacy of communication in this area, however, may be one reason for the frequent complaint that parents fail to respond to requests for consent to one or more aspects of the special education process.

Only a few states[3] directly involve the parent in making the educational placement decision. Such involvement is distinguished here from involvement in consenting to allow **others** to make that decision.

In Summary, most states provide for a formal notice to the parent at some point in the special education decision-making process, although such notice is given as frequently after as it is before an educational placement decision is made. Aside from involvement through a formal notice, direct involvement of the parent in the process most commonly takes the form of the giving or withholding of consent, consultation with school officials to discuss the need for consent and consultation of a more general nature to discuss the overall process or some aspect of it such as the referral or evaluation. Parent involvement in making the educational placement decision, in contrast to consenting to have others make the decision or to securing an understanding of the process is seldom provided for by state due process systems.

2. The appeal stage

The initial appeal in most states concerns parent rejection of an educational placement decision. In approximately ten states[4], the initial appeal might concern the parent's refusal of consent for an evaluation or failure to respond to the school's request for such consent. In addition, there are several other bases for appeal such as the right of the **school district** to appeal the parent's rejection of an educational placement

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[1] Ark., Md. and Vt.

[2] E.g., Colo., Me., Nev., Utah and Wyo.

[3] E.g., Conn., Mass. and Mich.

[4] E.g., Ala., Iowa, Ky., Minn., N.D., Ohio, Okla., S.C., S.D., and Va.

decision[5]; the right of the parent to appeal the denial of a request for a private school placement[6]; the right of a parent to appeal a school district's refusal to have a conference with the parent[7] or to conduct an evaluation[8]; the right of the child, the person referring the child or another person involved in the child's case to appeal the parent's decision to refuse to consent to the evaluation or the placement decision[9]; and the right of the parent to appeal a case of non-compliance by the local school district with the decision of the hearing officer[10].

The most typical appeals system is a two tier system where the initial appeal is conducted by local officials or their appointees, with a subsequent appeal to the state level. In this system, the formal due process hearing occurs during the initial appeal with the subsequent appeal being a review of the record of the due process hearing, with no new evidence or testimony added to what was presented at that hearing.

Although these two characteristics are found in the most common appeals system, a substantial number of states have appeals systems which vary from this model. For example, several states[11] have a one tier system. In some of these states[12], the hearing is conducted by a state-appointed hearing officer while in others[13], it is conducted by local officials or a locally-appointed hearing officer.

In other states[14], the initial appeal includes a due process hearing and the subsequent appeal appears to include a new hearing at which new evidence is presented (This new hearing is frequently referred to as a **de novo** hearing and is to be distinguished from the common situation where a subsequent hearing officer, in reviewing the record at the previous hearing, is authorized to request additional testimony or evidence). In some of the states[15] which seem to provide for a new hearing at the second level, the degree of new evidence which will be permitted at the hearing is in the discretion of the hearing officer who apparently can use as much of the record of the initial hearing as he/she wishes, in addition to hearing new testimony and receiving new evidence (The words "seem" and "apparently" are used because it is difficult to draw a sharp line between the situation where the subsequent hearing is a new one and where the subsequent hearing combines part of the record of the earlier hearing with new testimony and evidence).

In several states[16], the initial appeal is to a state designated hearing officer (or mediator)[17], and the subsequent appeal is to the state education agency or state commissioner of education. One state[18] presents a variation of this model by providing for a subsequent appeal to a quasi-administrative body composed half of parents of children with special needs and half of educational and clinical professionals. Another state[19] presents a further variation by having the subsequent appeal be an **informal** one conducted by the state education agency. In several other states[20], the initial appeal is preceded by an informal meeting or mediation session. In one state[21], such a mediation conference is held at the discretion of the parent who also has the option of proceeding directly to the local board of education.

Approximately half of the states specifically provide for judicial review of the final decision of the administrative process. In most cases where judicial review is not specified, however, it is probably provided for under the state administrative procedure act which normally specifies the right of an "aggrieved party" (e.g., a losing party) to appeal to the court from the final decision of an administrative agency.

In summary, the most typical appeal system has two tiers with the initial appeal including a due process hearing conducted by local officials or their appointees and with the subsequent appeal conducted by the state education agency. The review at the subsequent hearing is typically limited to the record of the initial hearing, with

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[5] E.g., N.D. and Wyo.
[6] E.g., Calif.
[7] E.g., Ill.
[8] E.g., Ha., and Va.
[9] E.g., Wash.
[10] E.g., Minn.
[11] E.g., Colo., D.C., La., Mont., Nev., S.C., Tenn., Wisc. and Wyo.
[12] D.C., Nev., Tenn. and Wisc.
[13] Colo., La., Mont., S.C. and Wyo.
[14] E.g., Ariz., Mich., N.C., Tex., and Va.
[15] E.g., Mich.
[16] E.g., Ala., Idaho, Ind., N.D., Okla., Pa., S.D. and Vt.
[17] Idaho
[18] Mass.
[19] Idaho
[20] E.g., Conn., Mo. and N.J.
[21] Conn.

the hearing officer having the authority to hear new testimony or receive new evidence. Although these characteristics describe the appeals system in a substantial number of states, a large number of states have some variation of those characteristics. Court appeals from the final administrative decision are either provided for or implicitly included through the state administrative procedure act.

D. Specific Impressions

1. Referral, evaluation and placement stage

a. Content of the notice

Most notices merely **inform** the parent about some aspect of the special education decision-making process. Very few request the parent **to do** anything. Among those which request the parent to do something, the most common[22] asks the parent to give permission to evaluate. In other states, parents are requested to attend a conference to discuss the child's referral[23], to participate on a committee which is developing recommendations to change the child's educational program[24], to attend a conciliation conference[25], and to release to the school information from outside diagnosticians[26] (It should be noted that this discussion is limited to those parental rights which are specified in the notice, itself, and that it is frequently the case that such rights are provided for in regulations or other formal documents, but not specified in any notice to the parent)

Most notices do not describe in detail the proposed action or the reasons for that action. Where a notice does include a description, parts of the special education process which are most commonly described are the referral, the results of the evaluation and the proposed placement. The reasons for each of those actions are given less frequently than a description of those actions. Several states[27] describe the referral of the child and indicate the reasons for that referral. Several others[28] do the same for the evaluation while approximately half describe and give reasons for the placement decision, itself.

Few states provide notice of the names of individuals involved at various stages of the process, such as the names of individuals conducting the evaluation. Several states[29] specify who initiated the special education process while one state[30] indicates the person responsible for carrying out the decisions made at the referral and the evaluation conferences. Two states[31] indicate who is conducting the evaluation and who will be making the placement recommendation. One state[32] indicates who was responsible for denying the parent's request that the school evaluate the child for a new placement.

Approximately half of the states specify the tests, instruments or reports on which the proposed placement is based. One state[33] describes what the tests measure and their limitations with regard to the children being tested.

Approximately half the states describe alternative placements which were considered in addition to the one decided upon and several of these[34] describe the reasons why such alternative placements were not appropriate for the child (e.g. the placement was not the "least restrictive alternative").

A few states refer to a future notice which the parents will receive, such as a notice of the results of the evaluation[35]. One state[36] specifies that the subsequent notice will describe the results of the evaluation, will include a copy of the educational plan and will tell the parents of their right to meet with school officials to discuss the proposed placement.

Most of the states provide notice of the parent's right to obtain an independent evaluation (This notice is provided either at this stage or at a prehearing stage). Only a few[37], however, indicate who will pay for the costs of such an evaluation. Approximately a third of the states indicate where an independent evaluation can be obtained without cost.

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[22] E.g., Ala., Idaho, Iowa, Ky., Ohio, Okla., S.C., S.D., Tex. and Va.

[23] Ark.

[24] Mich.

[25] Minn.

[26] Tex.

[27] E.g., Ark., Calif., N.J., Tex. and Wash.

[28] E.g., Calif., Minn., Ohio and Okla.

[29] E.g., Ala., Iowa, Mass., Ohio, Okla., S.C., S.D., Va. and Wash.

[30] Ark.

[31] Minn. and Ohio

[32] Va.

[33] Ohio

[34] E.g., Iowa, Minn., Ohio, Okla., and S.D.

[35] E.g., Ark., Ga., Idaho, Iowa, Minn., Okla., S.C., S.D. and Va.

[36] Mass.

[37] E.g., "Public": Ala., D.C., Okla., S.C. and S.D.; "public or local school district": Iowa; "public, if at an approved facility, otherwise at private expense": Mass.; "at private expense": Minn. and Ohio.

A few states specify in the notice that the parents have the right to consult with school personnel concerning one or more aspects of the child's education[38]. A few states specify the parent's right to attend various meetings during the process[39].

A number of states[40] provide a statement of the parent's right to refuse to consent to the evaluation. Several of these[41] provide for a right of the school district to a hearing to try to obtain parental approval.

More than half of the states specify the parent's right to inspect and copy relevant student records. In most of the other states this right is probably provided for in laws and regulations governing pupil records.

Virtually every state specifies the right of the parent to reject the placement decision, to appeal and to have a due process hearing. Most states describe the procedures for appealing or objecting to the school's decision and approximately eight[42] describe the appeal process beyond the due process hearing (It should be noted that most of the remainder of the states describe the later stages of the appeal process prior to the initial due process hearing).

Approximately nine states[43] indicate where indigent persons can obtain free legal counsel. Approximately half of the states indicate that the child's educational status will not be changed, without parental consent, until the due process procedures have been completed. Most of the states provide an exception where the health or safety of the child or other children would be endangered by maintaining the current placement.

A number of other infrequently encountered provisions are contained in the notice. For example, at least two states[44] provide that all communications to the parents shall be in the primary language of the home as well as in English. One state[45] requires local school districts to provide pertinent information regarding educational services and associated medical and social services. Another state[46] provides that if response to the "Parental Consent for Evaluation" form is not received within fifteen days after it is sent, a school official will contact the home to determine the reason for the lack of response and the necessity for assigning a surrogate parent. Another state[47] provides for a right to a comprehensive evaluation even if the school has only recommended a limited evaluation. Several states[48] provide for involvement of the child in the decision-making process either through notice[49] or direct participation[50]. One state[51] provides the name, address and phone number of a contact person in the local school district to assist parents in exercising their rights. Finally, one state[52] provides notice of the parent's right to review the evaluation procedures and instruments, to be informed of how the evaluation findings will be used, to receive the proposed educational plan with a description of how it was developed and to have a review of the placement, with notice of the time the review will be conducted.

2. The appeal stage

a. Content of the Pre-hearing notice

As indicated earlier, this notice often contains a description of the appeal process and of the parent's right to an independent evaluation of the child. As was the case with prior notices, very few states[53] provide the names of specific individuals who will be involved in the appeal process.

As in the earlier notices, most states provide for the right to inspect and copy records while approximately eleven[54] refer to the right to compel the attendance of witnesses at the hearing. Most states also indicate the exact time and place of the hearing.

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[38] E.g., "evaluation and proposed placement": Alas., Ga., and Mass.; "referral and evaluation": Ga. and Mass.; "the child's problems": Ill., "the child's progress in the placement": Idaho; "the placement decision": Ohio and W. Va.

[39] E.g., "all proposed actions": Calif.; "development and writing of educational plan": Mass. and S.C.; "annual review conference": Idaho.

[40] E.g., Ala., Ga., Idaho, Iowa, Ky., Minn., Ohio, Okla., S.C., Va. and Wash.

[41] Ala., Iowa, Ky., Minn., Okla., S.C., S.D. and Va.

[42] Ala., Iowa, Mass., Mich., Minn., Okla., S.C. and S.D.

[43] E.g., Ala., Iowa, Ky., Mich., Okla., Pa., S.C., S.D. and W. Va.

[44] E.g., Ariz. and Mass.

[45] Ark.

[46] Ga.

[47] Mass.

[48] Mass., Minn. and Mont.

[49] Mont.

[50] Mass. and Minn.

[51] R.I.

[52] S.C.

[53] Iowa, N.C., Ohio, Va. and Wash.

[54] E.g., Ala., D.C., Ind., Iowa, Mich., Ohio, Okla., Pa., S.C., S.D., Tenn. and W. Va.

In addition to the notice provisions already described, there are a number of infrequently encountered ones. For example, several states[55] provide for pre-hearing conferences to try to resolve difference of opinion, to simplify the issues, to amend pleadings, to obtain admissions of fact[56] and to discuss the proposed placement[57]. Also, several notice provisions[58] provide for the child to remain in the current placement pending the outcome of the hearing. In one state[59] the parent is provided with the right to end the process after the due process hearing by requesting that the child be placed in the regular education program (This ends the process so long as the placement is not dangerous to the child or other children).

b. The hearing

Most states provide that the adversarial hearing be conducted by an "impartial" hearing officer or panel. There is considerable variation, however, in the meaning given to the word "impartial". Several states[60] require that the hearing officer be "unbiased, disinterested and independent of the local system which made the original decision". One state[61] provides a slight variation of this by requiring simply that the hearing officer be "unbiased and disinterested". Several states[62] require that the hearing officer be "appointed" or "assigned" by or be an employee of the state education agency.

A substantial number of states require the impartial hearing officer to be appointed locally. As with hearing officers appointed at the state level, there is a great variation in these local level appointments. For example, several states[63] provide for school board members to be hearing officers. Other states[64] allow school board members the option of appointing a hearing officer as an alternative to holding the hearings themselves. Some states[65] require that the hearing officer be a designee of the local school board. A number of states[66] require that the hearing officer be a particular employee of the local school district.

In addition, there are a number of unique provisions for hearing officers. For example, one state[67] provides for a hearing board established by the state education agency. Another state[68] provides for a local hearing review board with three members chosen from a list of ten "unbiased" persons who do **not** reflect the cultural, racial or ethnic background of the child. One state[69] provides for "an impartial mediator" assigned by the state education agency, and required to be unbiased, disinterested and independent of both the local school district and the state education agency.

One state[70] provides for the hearing officer to be mutually agreed upon by the local school system and the parent and, if agreement cannot be reached, appointed by the state education agency. Another state[71] has a similar provision.

There is a great variation in the amount of time which is permitted between the time of notice of or request for the hearing and the time when the hearing is held. Virtually every state has a different provision with time lapses varying from five to forty-five days[72].

Most states specify that the hearing must be "fair and impartial". Approximately half the states have a provision concerning whether the hearing is open or closed. In some[73] it is closed unless an open hearing is requested by the parents; in others[74] it is open unless a closed hearing is requested by the parents; in yet others[75], it is closed with no parental option to have it open.

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[55] E.g., Idaho, N.Y. and Ohio.
[56] Wyo.
[57] E.g., Alas., Del., Ill. and N.D.
[58] E.g., Iowa, N.D., Ohio, Okla. and S.D.
[59] Mass.
[60] E.g., Ala., Ariz., Ind., Iowa, Okla., and S.D.
[61] Ky.
[62] E.g., Ala., Conn., Ind., Iowa, Mass., Mo., Nev., N.C., Okla., Pa., S.D. and Vt.
[63] E.g., Col., Tex., Wash.
[64] E.g., Me. (with parent consent), R.I. and W. Va.
[65] E.g., Alas., Ore. and S.C.
[66] E.g., Mich. (supt't. of intermediate or constituent district), Mont. (county sup't.), N.Y. (chief school officer or designee), and Ohio (sup't. of schools or designee)
[67] Conn.
[68] Ga.
[69] Idaho
[70] Minn.
[71] Calif.
[72] E.g., 5 days (Del. and Ill.), 10 days (Ha.), 15 days (Fla. and Ohio), 20 days (Ga., Va. and Wash.), 15-30 days (Mich., Minn., Pa., Tenn.), 40 days (Idaho), 20-45 days (Ind.), 15-45 days (Ore., Tex. and W. Va.) and 30-45 days (Calif.)
[73] E.g., Ala., D.C., Ga., Ind., Iowa, Kan., Ky., Minn., N.Y., N.C., (second appeal), Okla., Ore., S.C., S.D., Tenn. and W. Va.
[74] E.g., Idaho, Mich. and Pa.
[75] E.g., Conn. and Mass.

Several states[76] provide that the parent may "compel" the presence of witnesses while others[77] provide that the parent may only "request" such presence.

Most states allow some form of representation of the parents by a third party, but there is considerable variation in the kinds of representatives which are permitted. The most common provisions are those which are unrestricted, e.g., "including but not limited to counsel"[78], "a person chosen by the student or the student's parents"[79] and "any person chosen by the parents"[80]. The least common are those which are restricted, e.g., "counsel"[81] or "an advocate"[82].

Virtually every state grants the right to present evidence and testimony. In addition, most states specify the right to confront and cross-examine adverse witnesses. Presumably, the right to confront adverse witnesses carries with it the right to compel their attendance.

Approximately half the states specify the right of deaf parents or parents whose primary language is not English to have an interpreter at the hearing. Most of these states do not specify who will pay for the interpreter but at least two states[83] who do, indicate that payment shall be the responsibility of the local school district, while a third specifies "public" responsibility[84]. One state specifies that the interpreter will be provided at the expense of the local school district **or** at public expense[85].

At least thirteen states[86] require the presence of the child at the hearing. Of these states, however, eleven[87] qualify this requirement by giving the hearing examiner the authority to exclude the child if the examiner finds that the child's presence will be "harmful" to the child. Two states appear to allow the child to be present, without qualification[88].

Approximately half the states define the burden of proof. At the hearing where the placement decisions is at issue, the typical burden of proof provision requires the school district to demonstrate that the evaluation or placement or both were "appropriate"[89]. One state requires the parent to demonstrate the inappropriateness of any proposed classification or placement[90].

Several states[91] have a separate burden of proof requirement which must be met before an evaluation can be done. This requirement is applicable to situations where a parent has failed to respond to a request to evaluate or has refused permission to evaluate and the local school district wishes to go forward with the evaluation. In the situation of a failure to respond, these states require the local school district to demonstrate that efforts "reasonably likely to succeed" were made to contact the parents and that there is a "reasonable likelihood" that the child will be found to have special needs[92]. Where the situation involves a refusal of permission to evaluate, the same states require the local school districts to demonstrate that the continuing presence of the child in the current placement is so dangerous to the health and safety of the child or so disruptive of the program that an evaluation must be undertaken as a first step to a new placement.

One other state[93] has a unique burden of proof provision which requires the school district, in the case of a parental refusal to give permission to evaluate, to demonstrate that it has "reasonable grounds to believe that the educational assessment procedures are justified". In the case of a parental failure to respond, the same state requires the local school district to demonstrate that it has repeatedly tried to contact parents, utilizing efforts reasonably calculated to succeed.

Most states have requirements concerning the availability of a record of the hearing. The variations between the states, however, are very great

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[76] E.g., Ala., Ariz., Conn., S.C., Tenn., Wash., W. Va. and Wyo.
[77] E.g., Idaho, Minn. and Ore.
[78] E.g., Ala., Conn., D.C., Ga., Ind., Iowa, Me., Minn., N.J., N.Y., Ohio, Okla., Ore., Va. and W. Va.
[79] Ha.
[80] Calif., Ill., Mich. and Pa.
[81] E.g., Alas., Colo., Fla., Kan., Mo., N.C., S.C., Tenn. and Tex.
[82] E.g., Wisc.
[83] Kan. and N.Y.
[84] Okla.
[85] Iowa
[86] E.g., Ala., Idaho, Iowa, Kan., N.Y., N.C., Ohio, Okla., S.C., S.D., Tenn., Va. and W. Va.
[87] Ala., Idaho, Iowa, Kan., N.Y., Ohio, Okla., S.C., S.D., Va. and W. Va.
[88] N.C. and Tenn.
[89] E.g., Conn., D.C., Ga., Ind., Iowa, Kan., N.D., Ohio, Okla., Ore., Pa., S.D. and W. Va.
[90] N.Y.
[91] Ala., Iowa, Ky. (after a conference has failed to result in permission being granted), Okla. and S.D.
[92] Id.
[93] Minn.

with regard to the form of the record and whether the parent must pay for it. As to the form, the record is required to be verbatim[94], a tape recording"[95], "a tape recording or verbatim"[96], "a written transcript"[97], "written or electronic verbatim"[98], "a tape recording or record made by a court reporter"[99] and "a summary"[100]. As to payment, most states which provide for a record of the hearing do not specify whether the record is available "free" or at cost to the parent. Several states[101] provide for a free copy to the parents, while others[102] specify that the parent must pay for a copy. One state[103] provides that a record of the hearings may be made by either party if it chooses, with the implication being that a record will not be made unless one party chooses to make it.

The standard for review which must be applied by the hearing examiner is specified in approximately half of the states. The most typical standard requires the hearing examiner to determine if the proposed placement is "appropriate"[104]. A variation of this[105] requires the examiner to determine whether: 1) the child has special needs; 2) the evaluation procedures were appropriate; 3) the "diagnostic profile" on which the placement decision was based is "substantially verified"; and 4) the proposed placement is "related to the child's educational needs". Frequently required as a part of the review, is a finding that a "more normalized placement would not serve the child's needs"[106]. One state provides that the review be based on "the best interests of the child"[107].

Approximately half the states specify what must be contained in the decision, itself. Most of these states require a statement of the facts, the conclusions and the reasons for each conclusion. Some states provide specifically for summaries of each of these components[108].

With regard to the evidence which is the basis of the decision, most states provide that the decision be based solely on evidence and testimony presented at the hearing. One state provides for the admission of other evidence, if both parties consent[109].

The typical state provides that the decision be in writing and sent to all parties. The method of delivery of the decision varies among the states with most states requiring that it be by "certified mail" and some states requiring "registered mail"[110] or a choice of certified mail or "personal delivery"[111]. Some states require that it be in English and the primary language of the home[112].

Most states specify a time limit for sending the decision after the hearing. The time limits vary from twenty four hours[113] to thirty days[114].

Most states provide for a statement of further rights to be included with the decision. The most typical of these statements details the additional appeal options which the parent may exercise.

In addition to the various rights described above, most states include in their notices some reference to the placement of the child pending the various appeals. Since the appeals process can have a duration of a year or more in some states, this aspect of the notice is particularly important. The most typical provision concerning placement of the child pending the completion of the appeal process maintains the **status quo** by providing that the child shall remain in the current placement unless the continuing presence of the child in that placement endangers the health and safety of the child or of others.

A number of states have variations of this typical model. For example, one state provides that a temporary change in placement may be made upon written request by the school superintendent and upon written notice to the parent[115]. Another state provides that if a child is not in a "free" educational program, the child shall be placed in a "free" educational program which is deemed suitable by the staff of the local school district[116].

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[94] E.g., Ala., Conn., D.C., Idaho, Okla., R.I. and S.C.
[95] E.g., Alas. and Ore.
[96] E.g., Iowa, Kan., Ky. and S.D.
[97] E.g., Fla., Mont. and Mo.
[98] E.g., Ariz. and Ohio.
[99] E.g., Ill.
[100] E.g., N.Y.
[101] E.g., Ariz., S.C. and W. Va.
[102] E.g., Mich., N.C., R.I., Tex. and Wyo.
[103] Ha.
[104] E.g., Ala., Conn., Okla. and S.D.
[105] E.g., Del., Fla., (except for number 4), Ill. and Tenn. (with some additional standards)
[106] E.g., Ala., Conn. and Okla.
[107] N.C.
[108] E.g., Ohio and Wisc.
[109] Ha.
[110] Kan., Minn., Neb., N.C., Ohio, Pa. and S.C.
[111] Ha. and Wash.
[112] Ariz. and N.D.
[113] E.g., Kan.
[114] E.g., N.C. and W. Va.
[115] E.g., Mich.
[116] E.g., Ind.

II. THE REQUIREMENTS OF P.L. 94-142

The previous section of this article provided a comparative overview of the various state due process systems in the area of special education. This section will examine, in detail, each of the due process requirements of P.L. 94-142 and will comment, in general terms, on whether those requirements appear to have been satisfied by most of the states. The comments will be limited to a general determination of whether there is **minimum formal** compliance with the requirements and will not attempt to discuss the extent to which satisfaction of the requirements exceeds that minimum or the extent to which there has been a failure of **implementation**. Each comment will conclude with a general opinion regarding the extent to which each requirement has been formally complied with by the states as a whole.

P.L. 94-142 enumerates a series of due process requirements which are prerequisites to the receipt by the states of federal funds under the Act. The Act (in section 615) provides that the required procedures "shall include but shall not be limited to" the procedures listed below.

1. "An opportunity for the parents or guardian of a handicapped child to examine all relevant records with respect to the identification, evaluation and educational placement of the child and the provision of a free, appropriate public education to such child" —This requirement has been satisfied in many states and does not seem to pose a problem of formal compliance.

2. "An opportunity for the parents or guardian of a handicapped child. . .to obtain an independent educational evaluation of the child" — Most states provide notice of the right to an independent evaluation. Few specify who will pay for it. The Act is unclear on the issue of payment unless the "opportunity" referred to is interpreted to mean a "free opportunity". If it is so interpreted, it may pose a problem of formal compliance since most states do not seem to provide an opportunity for a "free" independent evaluation.

3. "Procedures to protect the rights of the child whenever the parents or guardian of the child are not known, unavailable, or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State educational agency, local educational agency, or intermediate educational unit involved in the education or care of the child) to act as a surrogate for the parents or guardian" — An analysis of the extent to which there is compliance with this requirement was beyond the scope of this article. It is common knowledge, however, that the design of systems to recruit, train and assist parent surrogates will pose a serious problem of formal compliance and implementation since little attention has been given to this area of need.

4. "Written prior notice to the parents or guardian of the child whenever such agency or unit (receiving funds under the Act) proposes to initiate or change, or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child" — This notice requirement has been satisfied in most states with regard to the educational placement but not with regard to identification and placement. Many states, therefore, will be required to expand their notice provisions and to send notices to parents at earlier stages in the process than is now the case.

5. "Procedures designed to insure that the notice. . .fully inform the parents or guardian, in the parents' or guardian's native language, unless it clearly is not feasible to do so, of all procedures available pursuant [to the due process section of the Act]" — The general notice requirement has been addressed by most states and will not pose a serious formal compliance problem. The "native language" requirement, however, has only been satisfied by a few states and will pose a problem of formal compliance if it is strictly constructed and enforced. It will pose less of a problem if the "feasibility" loophole is liberally interpreted to give school systems an excuse for not meeting the requirement.

6. "An opportunity to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate education to such child" — This requirement should not pose a serious problem of formal compliance, since most states provide for a variety of formal and informal complaint processes. One problem which may arise, however, concerns the interpretation of the word "opportunity". If this is interpreted to mean a formal due process hearing, most states will have to incorporate additional hearing procedures into their present systems for providing impartial due process hearings.

In addition to the required procedures of the "due process section", the section also requires each state to provide an opportunity for "an impartial due process hearing" and for a series of appeals from the decision at such a hearing. The hearing and appeal requirements are the following:

1. "An impartial due process hearing which shall be conducted by the State educational agency, by the local educational agency or intermediate unit, as determined by state law or by the State educational agency" – Most states have complied with this requirement but there has been considerable variation in the nature of such compliance. This requirement may pose problems of compliance after the "impartial due process hearing requirement" is clarified.

2. "No [due process] hearing shall be conducted by an employee of such agency or unit involved in the education or care of the child" – A number of states permit the appointment of hearing officers who are employees of the local "agency or unit involved in the education or care of the child." These states will have to modify this practice. In addition some states allow local board members to hold hearings. This raises the issue of whether an unpaid board member is an "employee" of a local agency or unit. This area requires clarification. A determination of the seriousness of the compliance problem, therefore, cannot be determined until after such clarification.

3. "If the [due process] hearing is conducted by a local educational agency or an intermediate educational unit, any party aggrieved by the findings and decision rendered in such a hearing may appeal to the State educational agency which shall conduct an impartial review of such hearing. The officer conducting such review shall make an independent decision upon completion of such review" – This requirement has been satisfied by most of the states which provide for a due process hearing at the local or intermediate level and should not pose a serious problem of compliance.

4. "Any party to any [due process] hearing shall be accorded (1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children, (2) the right to present evidence and to confront, cross-examine, and compel the attendance of witnesses, (3) the right to a written or electronic verbatim record of such hearing, and (4) the right to written findings of fact and decisions. . ." – Requirements (2) and (4) are provided for by most states. Requirements (1) and (3) raise the issue of cost.

Who will pay for counsel or representation or for the transcript of a hearing? With regard to payment for counsel or other representation, the states are silent, except for a few which indicate where free counsel may be obtained. A few states provide for public payment for a transcript of the due process hearing, but most are either silent or provide for payment by the requesting party.

Thus, requirements (1) and (3) raise the issue of the meaning of "right". Does this mean an entitlement at public expense or merely an "opportunity", **if it can be afforded by the parents?** Clarification of the meaning of "right" will determine whether the requirement raises serious compliance problems, i.e., if "right" means entitlement at public expense, this requirement will have to be satisfied in most states.

A related issue is how the clause "individuals with special knowledge or training with respect to the problems of handicapped children" will be interpreted. Will lay advocates be included or excluded? If they are included, most states will have to add this to their due process provisions.

5. "A party aggrieved by the [findings of the complaint process or the due process hearing] shall have the right to bring a civil action. . . in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. . ." – This judicial review requirement has been addressed by most states and does not pose a serious problem of formal compliance.

The final provision of the "due process section" relates to the placement of the child pending the outcome of the appeals process. It provides the following: "During the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents or guardian otherwise agree, the child shall remain in the then current educational placement of such child, or, if applying for initial admission to a public school, shall, with the consent of the parents or guardian, be placed in the public school program until all such proceedings have been completed." This requirement, which, in general, provides for the preservation of the **status quo** until the completion of the appeal process, has been satisfied by most states. The only serious problem of compliance concerns the placement in the public school program, of children applying for initial admission to public school. This requirement is not addressed by most states and will require additions to their due process provisions.

III. ISSUES INVOLVED IN DESIGNING A DUE PROCESS SYSTEM

This section of the article will highlight some of the more significant issues raised by the previous discussion of the state due process systems and of the due process requirements in P.L. 94-142. These issues will then be discussed with a view toward assisting states in designing special education due process systems which are both fair and educationally sound, i.e., produce a "desirable" educational result.

A. Parent Involvement

A threshold issue concerns the type of parent involvement which is most desirable. The states provide for parent involvement in three principal ways: through notice, consent and consultation requirements. In addition, a few states provide for direct parent involvement in making the educational placement decision. Each of these forms of parent involvement will be discussed below.

A notice "involves" the parent by providing an awareness of one or more aspects of the process. Awareness of the process is significant since it creates the **opportunity** for involvement. Virtually every state provides for notice to the parent at some point in the decision-making process. In addition, notice is required by P.L. 94-142. Notice, therefore, is an essential part of any special education system.

The principal issue with regard to notice is when to give it. As indicated previously, the states divide equally on this issue with approximately half providing notice at some point prior to the making of the educational placement decision and the other half providing notice at some point after that decision but prior to the actual placement. P.L. 94-142 requires a written notice prior to the initiation of a referral or evaluation. It also requires a written notice prior to a proposed placement, but not necessarily prior to the making of the decision regarding that placement. Thus, the states must decide whether to provide notice to the parents prior to or after that placement decision. In general, a notice maximizes the opportunity of the person receiving it to participate, if it is received as early as possible in the process.

A few states require parental **consent** to a referral or evaluation. P.L. 94-142 contains no such requirement, although it does require a form of limited parental consent to placement by allowing the parents to appeal a placement decision. This is limited consent because it is implied in the nature of the appeal process that if the parent loses and cannot afford a private placement, the child will be placed in the recommended educational program. Thus, some parents do not have an absolute veto.

In general, a consent requirement is a very limited, although potent, form of parent involvement. Use of the consent requirement raises a number of issues. For example, is it legally necessary to have parental consent, or is this an area, such as achievement testing, which is within the discretion of the school to carry out without the consent of the parent. Is a consent requirement a desirable form of parental involvement? Suppose the parent refuses to consent, what process or action should follow? Who has the ultimate legal authority to override a parental refusal to consent? Should a refusal to consent be considered final and absolute? What response would the system make to a parental failure to respond to a request for consent? How should differences of opinion between the parent and child be resolved?

Most states provide for some form of parental involvement through informal consultation. A substantial number of these provisions, however, are geared toward securing parental consent. P.L. 94-142 contains an informal consultation requirement.

An informal consultation provides the opportunity to resolve a controversy in a friendly and non-adversarial manner. For such consultations to be effective, however, parents must be aware of them and the conference must not be coercive in nature. Also, as in the case of the notice requirement, informal consultations will probably be most effective if they occur prior to the making of the decision which is being discussed.

A few states provide for direct parent involvement in the making of the educational placement decision. This type of involvement has the advantage of enabling the parent's knowledge of the child to be applied to the decision. It also is a direct way of informing the parent about the placement decision and of giving the parent a stake in that decision. Although the effect of this kind of direct parent involvement has not been documented, it is likely that one effect would be to reduce the number of appeals from

placement decisions since the parents' concerns would be heard prior to the making of the decision and could then be reflected in that decision. P.L. 94-142 requires direct involvement of the parent or guardian in developing the educational plan.

Subject to the minimum requirements of P.L. 94-142, each state has the latitude to select from among the various forms of parent involvement discussed above. Such selection must inevitably be based upon value judgments regarding the desirability of one form or another of parent involvement and of the variations within each form.

B. The Involvement of the Child

Only a few states provide for involvement of the child during the early stages of the special education decision-making process with a slightly larger number of states providing for such involvement at the due process hearing. P.L. 94-142 requires involvement of the child in developing the educational plan, but only if such involvement is "appropriate."

Virtually every other system of due process, including juvenile and civil commitment proceedings involving minors, directly involves the juvenile or minor or adult who is the subject of the proceeding. In this sense, the special education systems which have been developed are unique in excluding from involvement the person who is the subject of the decision which is being made, i.e., the child.

One of the issues involved in excluding the child is that the child's point of view always has to be presented by a substitute, i.e., the parent or guardian. Also, persons representing the parents, such as counsel, advocates and special education professionals, must represent the child's interests as seen by the parents. This can be particularly treacherous where the parents and child are in disagreement with each other over the placement decision.

In addition, exclusion of the child may make it impossible to act in the child's best interests since, in many cases, the child's preference will be synonymous with the child's best interests. Also, exclusion of the child may ultimately be found by the courts to violate the child's right to due process, **despite the fact that the parent has been involved in the process.** Recent federal court decisions and state statutes indicate a movement in the direction of recognizing interests of the child which are independent of those of the parent and which must, therefore, be presented by the child rather than the parent. This kind of division of interests has always been the case in the area of child abuse and neglect and is increasingly being recognized in areas such as abortion, treatment for drug addiction, treatment for venereal disease and civil commitment proceedings where parents are attempting to commit their child.

Each state, therefore, must consider the desirability of including the child in the special education decision-making process. Since P.L. 94-142 permits such involvement, each state may include it as part of its due process system.

C. The Impartial Due Process Hearing

Virtually every state provides for some form of "impartial due process hearing". P.L. 94-142 requires that the parents have an opportunity to present any complaints about the special education process in such a hearing. The availability of an impartial due process hearing procedure, therefore, is a necessary part of any special education due process system.

The establishment of such a hearing procedure, however, raises a number of issues. Who should be the hearing examiner? How can the hearing examiner be chosen and paid so as to remove any appearance of potential conflict of interest or partiality? How can the hearing process be designed so that the bargaining power of the parent is equal to that of the school system? More specifically, should indigent parents have access to free independent evaluations, free advocates and free hearing transcripts in order to give them an opportunity equal to that of more affluent parents and in order to equalize their bargaining power with that of school systems? Although the due process hearing is an essential part of any state due process system, is it sufficient without prior informal procedures designed to focus the issues or resolve the issues without the need for an adversarial due process hearing?

D. The Mediation Approach

In addition to the various informal consultation requirements and to the more formal due process hearing, several states have provided for a mediation procedure to be available at the time of commencement of the process leading to the impartial due process hearing. This procedure is not required by P.L. 94-142. The general differences between the mediation procedure and the due process hearing are that mediation is less formal, less adversarial and less pressured than the hearing.

A number of criticisms have been made of the exclusive use of an impartial due process hearing without any prior mediation process. Among these are that the due process hearing: 1) requires a great financial and emotional cost of the participants; 2) is too abstract and does not provide the hearing officer with a complete picture of the child's needs or of the school system's ability to implement a plan; 3) tends to be overly legalistic and narrow in focus, obscuring the goal of an educational placement which is in the best interests of the child; 4) tends to exclude poor and minority parents because of lack of pre-hearing outreach and communication and because of the intimidating nature of the formal hearing. The critics of the due process hearing, while recognizing the need for it, believe that the need could be reduced and the due process hearing made more effective by the addition of a prior mediation process which focuses or resolves issues.

The advantage of a mediation process in comparison and as an adjunct to a due process hearing are considered by its advocates to be the following: 1) it is slower and the fact-finding is more complete; 2) the mediator, more easily than a hearing officer, can reduce parent anxiety and increase parent involvement; 3) the mediator can suggest new program ideas to schools, while the hearing officer is less able to do this because of the requirement of "impartiality", which, while important in the mediation process, is not as heavily stressed; 4) mediated agreements are "better for the child" because they are more complete than hearing decisions which tend to be more "skeletal" and abstract; 5) local school systems are more likely to implement a decision reached through mediation than one forced upon them by the hearing process; 6) the issues are clearer earlier than in the hearing process; and 7) mediators are more "successful" in resolving disputes than are hearing officers, and, therefore have more job satisfaction than hearing officers.

Introduction of a mediation process into a special education due process system would involve a substantial amount of effort. Nevertheless, such effort might well be compensated for by a total process which is procedurally fair and which produces the best possible educational result.

IV. CONCLUSION

Each state expecting to receive federal funds under P.L. 94-142 must comply with the requirements of that Act. Those requirements include an effective system of notice to parents, an impartial due process hearing and a system of appeals beyond the due process hearing.

In addition to designing a special education system which includes due process procedures which satisfy the requirements of P.L. 94-142, each state should consider designing a **due process system** which is both procedurally fair and educationally sound. One problem with mandated federal requirements is that, despite their disclaimers to the contrary, they are frequently considered to be both the minimum and maximum provisions which a state should adopt. In the case of due process in special education, such an interpretation of the federal requirements might leave the states with systems, which, while formally adequate from a compliance perspective, are inadequate in producing the desired results of the best possible placements for as many children as possible, regardless of the economic income or ethnic identity of the family.

In order to have due process systems which "work", it will be necessary to have systems which 1) provide to poor and minority families, extensive outreach and communication, free representation, free independent evaluations and free hearing transcripts and 2) which have built into them a well designed informal process which precedes the formal due process hearing. One or both of these characteristics are integral parts of most due process systems outside of special education. They also represent the severe shortcomings of those due process systems which have not accepted them.

Involvement of the child is another requirement which is essential for a successful system, since it is difficult to conceive that an important decision-making process can be fair and effective if the person about whom the decision is being made is completely excluded. Finally, no due process system will work unless the persons who design and operate it are committed to the basic concept of the desirability of involving the parent and child in the decision-making process.

DUE PROCESS PROVISIONS IN STATE SPECIAL EDUCATION STATUTES

Lawrence Kotin, Esq. and Nancy B. Eager, Esq.

STATE and STATUTE	I. REFERRAL, EVALUATION, AND PLACEMENT					
	A. POPULATION AFFECTED--citations to statutory categories	B. INITIAL RESPONSIBILITY IN	C. DUE PROCESS PROVISIONS:			
			1. NOTICE to parent or guardian	2. CONSULTATION with parent or guardian	3. CONSENT by parent or guardian	4. OTHER
ALABAMA Ala. Code tit. 52 (1973)	s.534(24)	Placement committee--determines eligibility of exceptional children for placement, and makes recommendations concerning admission or withdrawal from school program. s.534(24)	OF: Reasons for classification as an exceptional child. WHEN: Following such classification. s.534(31)			
ALASKA Alaska Stat. (1975)	s.14.30.350	Commissioner of education--certifies child for special education program. s.14.30.330(b)		RE: Assessment of child's type and extent of exceptionality--opportunity for consultation shall be provided. WHEN: After initial assessment and prior to placement, and also after each re-evaluation of condition and placement of child. s.14.30.191(b)	1. TO: Application by local special education administration for child's enrollment in special education program. s.14.30.330(a) --- 2. TO: Transfer of exceptional child to school outside district in which he resides. WHEN: Prior to transfer. s.14.30.285(f)	If parent or guardian disagrees with assessment, he may request independent examination and evaluation of child. s.14.30.191(c)
ARIZONA Ariz. Rev. Stat. (1975)	s.15-1011	Chief administrative official of school district or designee refers child for evaluation, determines placement, and places child. s.15-1013A-E		1. RE: Referral of child for evaluation for possible placement in special education program. WHEN: Prior to referral. s.15-1013A --- 2. RE: Placement of child in special education program. s.15-1013D	TO: Placement and retention of child in special education program. s.15-1013E	
CALIFORNIA Cal. Educ. Code (Deering 1975)	s.7002--individuals with exceptional needs.	Local agency designated in local comprehensive plan as responsible to administer the plan. s. 7015, s.7017, s.7020	1. OF: Assessment of child, in primary language of pupil's home, with full explanation of procedure, objective, and facts re: assessment. Also with statement that no educational placement will result without consent of parent or guardian.[1] WHEN: At least 10 days prior to scheduled assessment. BY: School appraisal team. FORM: Written. s.7021(a)	RE: Program recommendations. BY: School appraisal team. s.7020(a)	TO: Participation of child in special program. WHEN: Following being informed of facts regarding selection of that program. Consent may be withdrawn at any time after consultation with member of school appraisal team. FORM: Written. s.7022	

1. A 30-day placement of a pupil who transfers from a special education program in another school district may be made without such notice, but is subject to review within the 30-day period. Cal. Educ. Code s.7021(d) (Deering 1975).

STATE and STATUTE	I. REFERRAL, EVALUATION, AND PLACEMENT					
	A. POPULATION AFFECTED--citations to statutory categories	B. INITIAL RESPONSIBILITY IN	C. DUE PROCESS PROVISIONS: 1. NOTICE to parent or guardian	2. CONSULTATION with parent or guardian	3. CONSENT by parent or guardian	4. OTHER
CALIFORNIA (continued)			2. OF: When pupil is being assessed, notice of rights pursuant to ss.7027.2 and 7023 (see Chart II.B.2) re: review, hearing, and appeal, and of right to present information to school appraisal team, and to participate in the meeting re: recommendation and program planning. s.7022.1 3. OF: Findings of assessment, recommended educational decision, and reasons. Notice shall state: 1) A conference with parent or guardian will be scheduled upon request; 2) If parent or guardian disagrees with recommended decision, he/she has right to independent assessment subject to board regulations; 3) Such independent assessment will not be at expense of local agency unless agreed to; 4) Parent or guardian has right to review of recommended education decision. FORM: Written, in primary language. s.7021(c) 4. OF: Right to request review of educational assessment service whenever they believe pupil is not making appropriate progress. WHEN: Annually, sent by school appraisal team. s.7020(a)			
	s.6901--mentally retarded	School district or county superintendent--enrolls mentally retarded pupils upon recommendation of local admission committee. s.6902.05, s.6902.1		1. RE: Psychologist's recommendation to admission committee. WHEN: Following completion of psychological examination--mandatory by psychologist. s.6902.085 2. RE: Discussion of admission committee conclusion and to obtain permission for placement. WHEN: Following admission committee meeting, by committee member--mandatory. s.6902.085 3. RE: Participation in program for mentally retarded and retarded intellectual development of pupil, by local admission committee or member--mandatory. WHEN: Prior to participation. s.6902.5	1. TO: Individual psychological evaluation. s.6902.085 2. TO: Placement in special education class for mentally retarded, in writing. WHEN: Following explanation of program, mandatory. FORM: Written. s.6902.085	Right of representation as per s.6755.2 (above) s. 6902.055

STATE and STATUTE	I. REFERRAL, EVALUATION, AND PLACEMENT					
	A. POPULATION AFFECTED--citations to statutory categories	B. INITIAL RESPONSIBILITY IN	C. DUE PROCESS PROVISIONS: 1. NOTICE to parent or guardian	2. CONSULTATION with parent or guardian	3. CONSENT by parent or guardian	4. OTHER
CALIFORNIA (continued)				4. RE: Withdrawal of pupil from special education program for mentally retarded. WHEN: Upon determination of misplacement, following re-testing. s.6902.09		
	s.6870--exceptional children for whom no appropriate educational services are available or can reasonably be provided	County superintendent of schools--makes finding of unreasonableness of cost to educate specified children in school district: final approval by Superintendent of Public Instruction.[3] s.6871				Whenever an admission committee is established to determine eligibility for tuition payments under this Chapter (812), parent or guardian has rights of representation prescribed by ss. 6755.2, 6803.3, and 6902.055 (see Chart above and below). s.6871.1
	s.6750--educationally handicapped pupils	Governing board or county superintendent upon recommendation by admission committee--must establish special education programs. s.6750.1, s.6751	OF: Testing or screening of pupils. WHEN: At least 15 days prior to testing and screening. FORM: Written. s.6758	RE: Learning disorders of child and objectives of program for educationally handicapped pupils. WHEN: Prior to participation program--mandatory. s.6755.3	1. TO: Participation in screening or testing. WHEN: Prior to screening or testing. FORM: Written, filed with governing board. 2.6758 2. TO: Participation in special educational program. WHEN: Subsequent to consultation (s.6755.3) and prior to participation in program--mandatory. FORM: In writing, filed with governing board of school district or county superintendent. s.6755.3	1. Parent or guardian has right to examine copies of written instruments to be used for testing or screening. s.6758 2. Whenever pupil is being evaluated for placement (s. 6755) or review and recommendation procedure is being conducted (s.6755.1) parent or guardian has right to representation of pupil and presentation of additional material of advisory nature. Such representative may be physician, optometrist, psychologist, social worker, or teacher. s. 6755.2

[3] Cal. Educ. Code ss.6870-6873 (Deering 1975) provide for payment to parent or guardian of children defined in s. 6870 toward tuition in public or private schools outside school district of residence.

STATE and STATUTE	I. REFERRAL, EVALUATION, AND PLACEMENT					
	A. POPULATION AFFECTED--citations to statutory categories	B. INITIAL RESPONSIBILITY IN	C. DUE PROCESS PROVISIONS:			
			1. NOTICE to parent or guardian	2. CONSULTATION with parent or guardian	3. CONSENT by parent or guardian	4. OTHER
CALIFORNIA (continued)	s.6802--physically handicapped pupils	Governing board--must make special provisions necessary for education of physically handicapped. s.6801				1. Right of Representation as per s.6755.2 (above). s.6803.3 2. No pupil shall be required to take advantage of special provisions made if parent or guardian files statement with governing board showing that pupil is receiving adequate educational advantages. s.6814
COLORADO Colo. Rev. Stat. Ann. (1975)	s.22-20-103 (4)	Committee of professionally qualified personnel--determines if a child is handicapped and recommends placement.[4] s.22-20-108(1)		RE: Determination that child is handicapped--committee shall provide opportunity for consultation. BY: Committee or representative thereof. WHEN: Prior to determination. s.22-20-108(1)	TO: Psychological testing of child for placement in special education program. WHEN: Prior to testing. FORM: Written. s.22-20-108(2)	
CONNECTICUT Conn. Gen. Stat. Ann. (1975)	s.10-76a	Town or regional board of education--identifies, determines eligibility, and prescribes educational programs for children requiring special education.[5] s.10-76d(a)	1. OF: Any meeting conducted by a planning and placement team established in accordance with regulations issued by state board of education. WHEN: At least 3 days prior to meeting. s.10-76d(a) 2. OF: Laws relating to special education. WHEN: Immediately upon the formal identification of child requiring special education s.10-76d(a)	RE: Discussion, development or writing of educational program at any meeting conducted by a planning and placement team--right to be present at and participate in such meeting. s.10-76d(a)	1. TO: Referral of child by a physician, clinic or social worker to school district for determination of eligibility for special education. s.10-76d(b) 2. TO: Board of education making agreements with any private school or public or private agency or institution to provide special education programs or services. s.10-76d(d)	

4. The committee is designated by the board of education of the school district or by the governing board of cooperative services if the administrative unit encompasses more than a single school district. The composition of the committee shall be prescribed by the State Board, with suggestions for composition provided by statute. Colo. Rev. Stat. Ann. s.22-20-108(1) (1975). The State Board shall develop criteria for identification of handicapped children eligible for special educational services. Colo. Rev. Stat. Ann. s.22.20-104(1) (1975). In formulating recommendations for placement, the committee shall work cooperatively with the Department of Institutions, when applicable, and shall be guided by the legislative declaration set forth in Colo. Rev. Stat. Ann. s.22.20-102, Colo. Rev. Stat. Ann. S.22-20-108(5) (1975).

5. In accordance with regulations and procedures established by the secretary of the state board of education and approved by the state board of education. Conn. Gen. Stat. Ann. s.10-76d(a), 10-76b(b) (1975).

STATE and STATUTE	I. REFERRAL, EVALUATION, AND PLACEMENT					
	A. POPULATION AFFECTED--citations to statutory categories	B. INITIAL RESPONSIBILITY IN	C. DUE PROCESS PROVISIONS:			
			1. NOTICE to parent or guardian	2. CONSULTATION with parent or guardian	3. CONSENT by parent or guardian	4. OTHER
FLORIDA Fla. Stat. Ann. (1975)	s.228.041 (19), s.236.04(4)		OF: Placement or denial of placement in a program of special education. Statement informing parent or guardian of right to a review of the determination and of the procedures for obtaining such review. WHEN: Following placement or denial of placement of a student classified as an exceptional student. s.230.23(m)4		See Footnote 7.	
IOWA Iowa Code Ann. (1975)	s.281.2	Board of directors of school district or area education agency--establishes centers to diagnose and provide corrective services, examines and certifies children requiring special education, and provides special education programs and services.[8] s.281.4,s.281.7				
KANSAS Kan. Stat. Ann. (1975)	s.72-962(f)	Local board of education--establishes special educational services and determines who is to receive them. s.72-967, s.72-972	OF: Proposal by local board of education to 1) exclude, reassign or transfer child from regular class on ground that he is an exceptional child; or 2) place in, transfer to or from, or deny placement in special educational services. Notice shall: 1) describe proposed action; 3) Inform parent or guardian of right to object to proposed action at a hearing which may be had, upon requestof parent or guardian, 15-30 days from date of receipt of notice. WHEN: Prior to taking any such action. FORM: In writing, mailed or personally delivered. s.72-972(a), (b)		TO: Implementing any action proposed by board of education (as set forth in s.720972(a) (See Chart I.C.1), prior to expiration of time afforded parent or guardian to request hearing. s.720972(c)	

7. Under the Florida School Health Service Act, 1974, written parental permission is required for annual medical or physical examination, screening and treatment.

8. Children requiring special education services may be identified in any way that the department of public instruction determines to be reliable. Iowa Code Ann. s.281.4(1975).

STATE and STATUTE	I. REFERRAL, EVALUATION, AND PLACEMENT					
	A. POPULATION AFFECTED--citations to statutory categories	B. INITIAL RESPONSIBILITY IN	C. DUE PROCESS PROVISIONS:			
			1. NOTICE to parent or guardian	2. CONSULTATION with parent or guardian	3. CONSENT by parent or guardian	4. OTHER
LOUISIANA La. Rev. Stat. Ann. (West 1975)	s.17:1942B	Parish and city school boards--responsible for diagnosis, evaluation, and placement of handicapped or other exceptional children. children.[13] s.17:1952 s.17:1943(c)		RE: Recommendation for special educational classes by special education center. s.17:1943(a)		
MARYLAND Md. Ann. Code art. 77 (1975)	ss.92, 102	County board of education--identifies and provides or arranges for appropriate educational facilities and services for handicapped children. s.99	OF: Any disease or defect, and advice relating to treatment, following required biennial school vision and hearing testing. Required school testing also includes check for physical disability requiring modification of school work. ss.138, 139			
MASSACHUSETTS Mass. Gen. Laws Ann. ch. 71B (1975)	s.1	School committee--identifies, diagnoses, evaluates children with special needs, and provides or arranges provision of special education program. s.3	OF: 1) Referral of child for purposes of determining whether child requires special education; 2) Evaluation procedure to be followed; 3) Child's right to independent evaluation at approved clinic or facilities; 4) Right to appeal any evaluation to department of education and then to courts. WHEN: Within 5 days after referral. FORM: In writing in primary language of home. s.3		TO: Education program suggested by initial evaluation. WHEN: Necessary prior to placement and implementation of program. s.3	1. Child may obtain independent evaluation following school evaluation. s. 3 --- 2. Written record and clinical history from both evaluation by school and any independent evaluation shall be made available. s. 3 --- 3. Annual evaluation of child's special educational program under procedures of initial evaluation, is required. s. 3

13. Following recommendation by special education centers, and pursuant to rules and regulations of State Board of Education. La. Rev. Stat. Ann. s.17:1943(A) (West 1975).

STATE and STATUTE	I. REFERRAL, EVALUATION, AND PLACEMENT					
	A. POPULATION AFFECTED--citations to statutory categories	B. INITIAL RESPONSIBILITY IN	C. DUE PROCESS PROVISIONS:			
			1. NOTICE to parent or guardian	2. CONSULTATION with parent or guardian	3. CONSENT by parent or guardian	4. OTHER
MISSOURI Mo. Ann. Stat. (1975)	s.162.675 (1) - (3)	Board of education of local or special school district--provides special educational services s.162.700	OF: 1) Results of diagnosis, evaluation or re-evaluation, and recommended assignment or change or denial of assignment; 2) Information as to procedure for requesting review of any action taken by board of by State Department of Education and of right to hearing upon review; 3) Information as to procedure for requesting re-evaluation; 4) Right to: inspect, upon request, all records pertaining to child including diagnoses, evaluation, and re-evaluations by local or state board of education. BY: Board of education or state department of education. FORM: In writing by certified mail, return receipt requested. ss.162.945, 162.950.1, .2		TO: Any change of assignment or status of handicapped or severely handicapped child within the period afforded for requesting and obtaining a hearing under ss. 1620950 and 162.960.2[16] FORM: In writing. s.162.955	Upon written request by parent or guardian to board of education or State Department of Education, as appropriate, a re-evaluation shall be made at any time but not to exceed once per year. s.162.950
NEBRASKA Neb. Rev. Stat. (1975)	ss.43-604 (2) - (9)	Superintendent--(high school district only) or county superintendent of schools--accepts applications for special instruction. s.43-603				
NEVADA Nev. Rev. Stat. (1975)	s.388.44	Board of trustees of school--establishes standard of eligibility for and furnishes special education. s.388.450		RE: Placement of child in special program for handicapped children --mandatory. WHEN: Prior to placement. s.388.470-1.(a)		
NORTH CAROLINA N.C. Gen. Stat. (1975)			OF: Placement or denial, or impending placement or denial, in a special program. Right to review of determination, and procedure and time-table for requesting review. WHEN: Promptly. FORM: Via parent or guardian conference, or by registered or certified mail, return receipt requested. s.115.179(b)	See Chart I.C.1.	TO: Change in program assignment or status of child with special needs within period afforded to request hearing.[18] FORM: Written. s.115-179.1(d)	

16. If health or safety of child or other persons would be endangered by delaying the change in assignment, the change may be made sooner but without prejudice to any rights that the child and his parent or guardian may have pursuant to this Act or otherwise pursuant to law. Mo. Ann. Stat. s.162.955 (1975).

18. Rules and regulations of the State Superintendent of Public Instruction and the Secretary of Human Resources shall allow appointment of a hearing officer or board to hear cases on appeal. N.C. Gen. Laws s.115-179.1(f) (1975).

STATE and STATUTE	I. REFERRAL, EVALUATION, AND PLACEMENT					
	A. POPULATION AFFECTED--citations to statutory categories	B. INITIAL RESPONSIBILITY IN	C. DUE PROCESS PROVISIONS:			
			1. NOTICE to parent or guardian	2. CONSULTATION with parent or guardian	3. CONSENT by parent or guardian	4. OTHER
OKLAHOMA Okla. Stat. Ann. (1975)	tit. 70 s.13.101	School district--provides special education, with screening and evaluation performed by Regional Service Centers. tit. 19, s.1210.275			TO: Individual evaluation of student (to determine whether recommendation for special education program is appropriate). WHEN: Prior to and as prerequisite of evaluation. tit.19,s.1210.277	
OREGON Ore. Rev. Stat. (1975)	s.343.212 (1), (2)	Approved school district program--certifies children as eligible for special education services. s.343.227	OF: Proposed placement in, transfer from, or denial of placement. Reasons. Right to: hearing if parent/guardian objects to proposed action. WHEN: Following evaluation, but prior to placement in, transfer from, or denial of placement; promptly. Chapter 621, s.12, Oregon Laws, 1975		TO: Eligibility for special education services, placement, transfer from, or denial of placement. WHEN: Prior to and as condition of receipt of services. FORM: Right to hearing if objection to placement, transfer, or denial of placement. (See Chart II.B.2.) s.343.227(1), Ch.621 s.12, Oregon Laws 1975	
SOUTH CAROLINA S.C. Compiled Laws Ann. (1975)	ss.21-295 617-(9) 21-295.12 (a)	Local school authority--determines eligibility for special education. s.21-295.5			TO: Return of handicapped person in a residential treatment center to his home. WHEN: Prior to such return.[20] s.21-295.17	
TENNESSEE Tenn. Code Ann. (1975)	ss.49-2901, 49-2914A	School district--tests and examines each child to determine whether handicapped. s.49-2941A	OF: Placement or denial of placement in program of special education. Right to: review of this determination, and procedure and time table for obtaining review. WHEN: Promptly. FORM: Registered or certified mail. return receipt requested. s.42-2947		TO: Change in program assignment or status of a handicapped child within period afforded to request hearing. FORM: Written.[21] s.42-2947	
VERMONT Vt. Stat. Ann. tit. 16 (1975)	s.2942	Commissioner of education--provides for special education of handicapped children. s.2944(a)				

[20] However, if parent or guardian opposes the recommendation of the agency administering the residential program to return the individual to his home, the agency may place the individual in other nonresidential programs such as foster homes, community residences, etc. S.C. Compiled Laws Ed. s.21-295.7 (1975)

[21] If health or safety of child or other individual would be endangered by delaying change in assignment, change may be made sooner, but without prejudice to rights of child, parent or guardian pursuant to any law. Tenn. Code Ann. s.42-2947 (1975).

STATE and STATUTE	I. REFERRAL, EVALUATION, AND PLACEMENT					
	A. POPULATION AFFECTED--citations to statutory categories	B. INITIAL RESPONSIBILITY IN	C. DUE PROCESS PROVISIONS: 1. NOTICE to parent or guardian	2. CONSULTATION with parent or guardian	3. CONSENT by parent or guardian	4. OTHER
WASHINGTON Wash. Rev. Code (1975)	s.28A.13.010	Superintendent of public instruction --requires school districts to ensure appropriate educational opportunities for handicapped children. s.28A.13.010	OF: Denial of opportunity of educational program under s.28A.27.010. Affirmation showing that 1) no agency or other school district can accommodate child and 2) such child will not benefit from alternative educational opportunity. WHEN: Within 10 days of decision. FORM: Written. s.28A.13.060			
WISCONSIN Wis. Stat. Ann. (1975)	s.115.76(3)	School district--ensures availability of special education program; screens and appoints multidisciplinary team to evaluate and recommend children with exceptional educational needs. s.115.80(3)	1. OF: Report to school board of name of child believed to have exceptional needs. WHEN: Prior to report being made. s.115.80(1)(c) 2. OF: Recommendation by mutidisciplinary team for special education of child. WHEN: Upon receipt of recommendation. FORM: Mail. s.115.81(2)(a) 3. OF: Decision to place child in special education program, or to remove child with exceptional educational needs from current educational program, and reasons for decision. Right to: hearing upon request in accordance with procedures established by department and set forth in notice. WHEN: Immediately when decision is made. FORM: Mail. s.115.81(2)(b), (c), (d)	RE: Recommendation of child for special education program by multi-disciplinary team. WITH: Multi-disciplinary team. WHEN: Prior to recommendation of school board. s.115.80(3)(c)	1. TO: Examination of child by multidisciplinary team. WHEN: After screening and referral of child to team, but before examination. FORM: Written. s.115.80(4)(b) 2. TO: Change in program or status of child with exceptional needs within period afforded to request hearing or, if hearing is requested, before school board issues decision. FORM: Written.[23] s.115.81(4)	

23. If health or safety of child or other persons would be endangered by delaying the change in assignment, change may be made earlier, upon order of school board, but without prejudice to any rights that child or parent may have. Wis. Stat. Ann. s.115.81(3) (1975).

STATE and STATUTE	II. RESOLUTION OF CONTROVERSY REGARDING EVALUATION OF PLACEMENT DECISION				
	A. RESPONSIBILITY VESTED IN:	B. DUE PROCESS PROVISIONS: 1. INITIAL APPEAL/REVIEW	2. HEARING	3. SUBSEQUENT APPEAL	4. JUDICIAL REVIEW
ALABAMA Ala. Code tit. 52 (1973)					
ALASKA Alaska Stat. (1975)	As set forth in regulations of Department of Education. s.14.30.191 (c)		PURPOSE: To resolve discrepancy, if substantial between school's evaluation of child and independent evaluation requested by parent or guardian, and to determine appropriate placement of child. BEFORE: Hearing officer. HOW INITIATED: By request of parent. CONDUCT OF HEARING: As set forth in regulations adopted by Board of Education, which are subject to state Administrative Procedure Act. s.14.30.191(c)		
ARIZONA Ariz. Rev. Stat. (1975)	Chief administrative official of school district or county, or designee. s.15-1014	STATUTORY CATEGORY: Review of placement of child in special education program. HOW INITIATED: Request of parent or guardian. WHEN: Once each semester. s.15-1014			
CALIFORNIA Cal. Educ. Code (Deering 1975) s.7002--exceptional needs	Superintendent of responsible local agency subject to appeal to Superintendent of Public Instruction. ss.7022.2(d), 7023	STATUTORY CATEGORY: Review of placement or services offered child, when parent or guardian disagrees with findings or recommendations of educational assessment service.[2] s.7022.2(a) HOW INITIATED: Request of parent or guardian by written notice to superintendent within 30 days following receipt of written educational decision. s.7022.2(c) WHEN: After either initial evaluation or annual evaluation. s.7022.2(a) PROCEDURE: Hearing--(see Chart II.B.2.) s.7022.2(c)	PURPOSE: To affirm or modify placement or services recommended, or to direct local agency to provide contract for private school services. s.7022.2(a) BEFORE: Superintendent of responsible local agency or his designee. s.7023.2(c) WHEN: Within 30 days following receipt of notice (see Chart II.B.1) with at least 2 weeks notice to parent or guardian of date, time, and place of hearing. s.7023.2(c) CONDUCT OF HEARING: Right to self-representation by parent or guardian, or to select a representative, have an interpreter present if necessary, access to all relevant school records, present additional evidence, call witnesses, request presence of and question any person involved in evaluation and placement decision. Notice of hearing shall state these rights. s.7023.2(c) DECISION: Shall be rendered within 15 days after submission of all evidence and argument. Parent or guardian shall be given written notice of decision in primary home language, and of right to further review. s.7022.2(d)	OF: Decision of local superintendent TO: Superintendent of Public Instruction, whose decision shall be final. HOW INITIATED: By petition of parent or guardian, within 30 days following receipt of decision of responsible local agency. PROCEDURE: Parent or guardian shall have opportunity to present oral or written argument, or both, within 30 days following receipt of appeal. DECISION: Shall be rendered in writing with reasons within 15 days after argument. Copy of decision shall be transmitted to parent or guardian, together with information regarding effective date of decision. s.7023.	

[2] While review is pending, unless local responsible agency and parent or guardian agree otherwise, pupil shall remain in current program, or if applying for initial admission to public school, shall with written consent of parent or guardian, be placed in program recommended by educational assessment service until review is completed. Cal. Educ. Code s.7022.2(a) (Deering 1975).

STATE and STATUTE	II. RESOLUTION OF CONTROVERSY REGARDING EVALUATION OF PLACEMENT DECISION				
	A. RESPONSIBILITY VESTED IN:	B. DUE PROCESS PROVISIONS: 1. INITIAL APPEAL/REVIEW	2. HEARING	3. SUBSEQUENT APPEAL	4. JUDICIAL REVIEW
CALIFORNIA (continued) s.6901--mentally retarded			PURPOSE: To review district's withdrawal of pupil from special education program for mentally retarded. BEFORE: Hearing panel as specified in s.6902.09. HOW INITIATED: Request of parent or guardian. WHEN: 20-30 days after request is made. CONDUCT OF HEARING: Pursuant to rules and regulations adopted by State Board of Education. DECISION: By majority vote, to uphold or reverse withdrawal. Decision is binding on school district. s.6902.09		
s.6870--exceptional children	School district. s.6871.5	STATUTORY CATEGORY: Appeal of school district's denial of parent or guardian's application for pupil's tuition payments under s.6871. HOW INITIATED: Parent or guardian appeal to county superintendent of schools. PROCEDURE: County superintendent reviews decision of school district. DECISION: Must affirm or reverse within 30 days after receipt of appeal. s.6871.5		OF: Decision by county superintendent affirming school district's decision. HOW INITIATED: By parent or guardian within 10 days following receipt of superintendent's decision. DECISION: Must affirm or reverse superintendent's decision within 30 days following receipt of appeal. If affirm, must append statement of reasons, in writing. If affirm, decision is final. s.6871.1	
s.6750--educationally handicapped					
s.6802--physically handicapped					
COLORADO Colo. Rev. Stat. Ann. (1975)	Board of education of school district--final approval of enrollment of child in special education program. s.22-20-108(3)	STATUTORY CATEGORY: Appeal. s.22-20-108(3)			

STATE and STATUTE	II. RESOLUTION OF CONTROVERSY REGARDING EVALUATION OF PLACEMENT DECISION				
	A. RESPONSIBILITY VESTED IN:	B. DUE PROCESS PROVISIONS: 1. INITIAL APPEAL/REVIEW	2. HEARING	3. SUBSEQUENT APPEAL	4. JUDICIAL REVIEW
CONNECTICUT Conn Gen. Stat. Ann. (1975)	Board of education of school district, subject to appeal to state board of education. s.10-76h(a)	STATUTORY CATEGORY: Review of (a) diagnosis, (b) evaluation of special education program provided, or (c) exclusion or exemption from school privileges. HOW INITIATED: Written request by parent or guardian. PROCEDURE: 1) Hearing--(see Chart II.B.2. #1) or s.10- 76h(a)(1) 2) Mediation--In lieu of hearing before local board of education. Mediation conducted by a mediator appointed by the secretary of the state board of education, who shall attempt to work out a solution acceptable to both local board and parent or guardian, within 15 days of request for mediation. s.10-76h(b)(1) DECISION: Mediation: If no agreement can be reached within 15 days after mediator first meets with parties, mediator shall certify in writing to the parties that mediation has not been successful, and within 15 days of such certification, appeal may be taken to state board of education. s.10-76h(b)(2) (see Chart II.B.2)	1. INITIAL APPEAL HEARING BEFORE: Board of education of school district. WHEN: Within 10 days after receipt of written request. CONDUCT OF HEARING: In closed session; to be transcribed. DECISION: Written copy of decision shall be sent to parent or guardian, together with notice of right to appeal, within 10 days of the hearing and review. s.10-76h(a)(1) 2. SUBSEQUENT APPEAL HEARING BEFORE: Hearing board.[6] s.10-76h(c) WHEN: Within 30 days after receipt of request. s.10-76h(c) CONDUCT OF HEARING: Board shall hear testimony of party requesting review and any other party directly involved, and such additional testimony as the board deems relevant. Hearing shall be transcribed. s.10-76h(d) DECISION: Notice of decision in writing to parent or guardian within 60 days of first meeting of hearing board. s.10-76h(e)	OF: Diagnosis, evaluation, or exclusion. s.10-76h(a)(1)(2). TO: State Board of Education. s.10-76h(a)(1)(2) HOW INITIATED: Written request by parent or guardian within 30 days of decision of local board of education following hearing (s.1076h (a)(1)), or within 15 days of certification by mediator that mediation was not successful. s.10-76h(b)(2) RIGHT TO: Transcript of hearings at expense of school district, upon request. s.10-76h(a)(1) PROCEDURE: 1) Hearing--(see Chart II.B.2 #2) and 2) Review--Hearing board[6] shall review previous records of case, and may require complete and independent diagnosis, evaluation and prescription of educational program at the expense of the school district. All formal sessions of review shall be transcribed. s.10-76h (d) SCOPE OF REVIEW: Hearing board has authority to confirm, modify, or reject diagnosis, evaluation, educational program, exclusion or exemption, and prescribe alternate special education program. s.10-76h(e) DECISION: Notice of decision for writing to parent or guardian within 60 days of first meeting of hearing board. s.10-76h(e)	OF: Decision of hearing board. TO: Court of common pleas. WHEN: Within 30 days from receipt of hearing board's decision. CONDUCT OF REVIEW: Hearing board shall supply copy of transcript of hearing and formal review sessions at expense of state board of education, upon request. s.10-76h(e)
FLORIDA Fla. Stat. Ann. (1975)		STATUTORY CATEGORY: Review of determination regarding placement or denial of placement in special education program. s.230.23(m)4.			

[6] The hearing board is to be composed of not less than 3 persons knowledgeable in appropriate educational fields. No person who participated in previous diagnosis, evaluation, prescription, exclusion or exemption, or review, nor any member of the board of education of the school district under review, shall be a member of the hearing board. Conn. Gen. Stat. Ann. s.10-76h(c) (1975).

STATE and STATUTE	II. RESOLUTION OF CONTROVERSY REGARDING EVALUATION OF PLACEMENT DECISION				
	A. RESPONSIBILITY VESTED IN:	B. DUE PROCESS PROVISIONS: 1. INITIAL APPEAL/REVIEW	2. HEARING	3. SUBSEQUENT APPEAL	4. JUDICIAL REVIEW
IOWA Iowa Code Ann. (1975)	State Board of Public Instruction--final decision ss. 290.1, 290.5	STATUTORY CATEGORY: Review/appeal--to state board of public instruction of any action or omission of state or local authorities on ground that child has been or is about to be: 1) denied entry or continuance in program of special education appropriate to his condition and needs; 2) placed in a special education program which is inappropriate to his condition and needs; 3) denied educational services because no suitable program is maintained; 4) provided with special education insufficient in quantity to satisfy legal requirements; 5) assigned to a program of special education when he is not handicapped. s.281.6, 290.1[9] HOW INITIATED: By child, parent, or guardian filing affidavit of complaint with state board. s.281.6, s.290.1 WHEN: Appeal from decision or order of board of directors of school within 30 days of order. s. 290.1 PROCEDURE: After the school corporation has filed within a specified time period a certified transcript of record relating to decision appealed from, a hearing will be held (see Chart II.B.2). Written notice to all parties of time and place of hearing shall be given. s.290.2	PURPOSE: See Chart II.B.1--Statutory Category. BEFORE: State board of public instruction.[10] CONDUCT OF HEARING: Hearing shall be transcribed and witnesses may be compelled to attend and give evidence to the same extent as is required by district courts.[10] ss. 290.3, 290.4 DECISION: As may be just and equitable. Transcript of hearing shall be filed in district court and a judgment entered. s.290.4		

9. Iowa Code Ann. s.281.6 (1975) provides for review of decisions regarding special education as noted on the Chart (II.B.1) and specifies that the procedures for review are those established in Chapter 290. Chapter 290 is entitled "Appeal from decisions of boards of directors" and applies to situations other than those arising in special education. The salient features of Chapter 290 are indicated on this chart.

10. State board of public instruction may adopt rules of procedure for hearing appeals which shall include the power to delegate the actual hearing of the appeal to the superintendent of public instruction and designees. The record of the appeal so heard shall be reviewed by the state board and the decision recommended by the state superintendent shall be approved by the state board. Iowa Code Ann. s.290.5 (1975).

STATE and STATUTE	II. RESOLUTION OF CONTROVERSY REGARDING EVALUATION OF PLACEMENT DECISION				
	A. RESPONSIBILITY VESTED IN:	B. DUE PROCESS PROVISIONS: 1. INITIAL APPEAL/REVIEW	2. HEARING	3. SUBSEQUENT APPEAL	4. JUDICIAL REVIEW
KANSAS Kan. Stat. Ann. (1975)	As set forth in regulations of local board of education, subject to appeal to board of education. s.72-972, s.72-974	STATUTORY CATEGORY: Child, or parent or guardian has right to hearing before child is: 1) excluded, reassigned or transferred from regular school classes on ground that he is exceptional child; or, 2) placed in, transferred to or from, or denied placement in special education services. (See Chart II.B.2.#1) s.72-972	1. INITIAL APPEAL HEARING PURPOSE: See Chart II.B.1 BEFORE: As set forth in rules and regulations of local board of education.[11] ss.72-972, 72-973 HOW INITIATED: By request of parent or guardian 15-30 days from date of receipt of notice of right to hearing (see Chart I.C.2.) s.72-972(b) CONDUCT OF HEARING: In accordance with rules and regulations adopted by board. Shall be closed hearing unless parent or guardian requests an open hearing. Rules and regulations shall afford procedural due process, including right to: a) have counsel present, b) parent or guardian to be present, c) hear or read full report of testimony of material witnesses, including those recommending proposed action, d) present witnesses in person or their testimony by affidavit, including expert medical, psychological or educational testimony, e) child to testify in his own behalf and give reasons in opposition to proposed action, f) have an orderly hearing, and g) fair and impartial decision based on substantial evidence. Above rights are rights of the child, except b) (parent or guardian) and c) (child and his counselor or advisor). Further, at a reasonable time prior to hearing, parent or guardian or counsel shall be given access to all records, tests, reports or clinical evaluations relating to proposed action. s.72-973 DECISION: Written notice of result of hearing shall be sent by restricted mail to child, parent or guardian or counsel within 24 hours after result is determined. s.72-974(a) 2. SUBSEQUENT APPEAL HEARING: BEFORE: Board or hearing officer appointed by board.[12] WHEN: Not later than 20 calendar days after notice of appeal is filed. Pupil and parent or guardian shall be notified in writing of time and place of appeal hearing at least 5 days prior thereto. CONDUCT OF HEARING: Under rules and regulations consonant with s.72-973 (see above, including list of due process rights). Record of appeal hearing shall be made. DECISION: Board of education shall render its decision not later than 5 days after conclusion of appeal hearing. If hearing officer hears appeal, he shall prepare written report to board, who shall determine the appeal with or without additional hearing. s.72-974(a),(b)	OF: Decision following initial hearing under s.72-972. TO: Board of education of school district. HOW INITIATED: By child, parent or guardian filing written notice of appeal with clerk of board not later than 10 calendar days after receiving notice of decision following hearing. PROCEDURE: Hearing--(see Chart II.B.2 #2.) s.72-974(a)	OF: Decision following appeal hearing under s.72-974. TO: District court. HOW INITIATED: In manner provided by K.S.A. 60-2101 as amended. s.72-975(c)

11. Persons who conduct hearing shall be certified employees but shall not be the same person or persons responsible for recommending the proposed action upon which the hearing is based. Kan. Stat. Ann. s.72-973 (1975).

12. Hearing officer may be a member of board, an attorney or a certified employee of the school district, but shall not be any person responsible for recommending the proposed action nor any person who conducted the initial hearing under Kan. Stat. Ann. s.72-972. Kan. Stat. Ann. s. 72-974(b) (1975).

STATE and STATUTE	II. RESOLUTION OF CONTROVERSY REGARDING EVALUATION OF PLACEMENT DECISION				
	A. RESPONSIBILITY VESTED IN:	B. DUE PROCESS PROVISIONS: 1. INITIAL APPEAL/REVIEW	2. HEARING	3. SUBSEQUENT APPEAL	4. JUDICIAL REVIEW
LOUISIANA La. Rev. Stat. Ann. (West 1975)	See Footnote 14.				1. OF: Recommendation of special education classes made by special education center, if retesting initiated by parent or guardian justifies court review. BY: District or juvenile court. HOW INITIATED: By parent or guardian. s.17:1943(A)
MARYLAND Md. Ann. Code art. 77 (1975)	State Board of Education. s.100A(a)	STATUTORY CATEGORY: Review for good cause of 1) diagnosis; 2) evaluation of educational program provided by local or regional board of education; 3) exclusion or exemption from school privilege of child by local or regional board of education. s.100A(a) HOW INITIATED: By written request to State Board of Education by parent or guardian of handicapped child. s.100A(a) WHEN: After exhaustion of all locally available administrative remedies and procedures. s.100A(a) PROCEDURE: Hearing board[15] to be established by State Board within 60 days following receipt of request for review. Hearing board may 1) dismiss request for review, which after review of educational records of child (which local or regional board is required to furnish), it deems to have been made without good cause; 2) hear any additional testimony as it shall deem relevant; 3) require a complete and independent diagnosis, evaluation and prescription of educational program at cost to State Board of Education. s.100A(b), (c) SCOPE OF REVIEW: Hearing board has authority to confirm, modify, or reject any diagnosis, evaluation, or education program prescribed or exclusion or exemption from school privileges and prescribe alternate special educational programs for child. s.100A(d)	BEFORE: Hearing board.[15] CONDUCT OF HEARING: Hear any additional testimony beyond previous records of child which hearing board shall deem relevant. (see also Chart II.B.1.) s.100A(c)		OF: Decision of hearing board. TO: Circuit court. s.100A(d)

14. 1) Upon request, a written summary statement of diagnosis and recommendation for special education classes made by special education center shall be provided parent or guardian. s.17:1943(A). 2) Parent or guardian shall have right to have child retested by other competent public or private authorities, following receipt, upon request, of diagnosis and recommendation for special education classes made by special education center. s.17:1943(A). 3) Upon written demand by parent or guardian of children having difficulty in normal school classes, parish or city school board shall have child diagnosed and evaluated, unless such diagnosis or evaluation has been made within past one year. s.17:1943(C). 4) Parents and local supervisor of special education services may request re-evaluation after 6 months enrollment of child in special education class. s.17:1943(D).

15. Hearing board to consist of not less than 3 persons knowledgeable in areas significant to educational review of child. Members may be employees of State Department or may be outside Department. No person shall serve as member of hearing board who participated in previous diagnosis, evaluation, prescription of special educational services. Md. Ann. Code art. 77 s.100A(b) (1975).

STATE and STATUTE	II. RESOLUTION OF CONTROVERSY REGARDING EVALUATION OF PLACEMENT DECISION				
	A. RESPONSIBILITY VESTED IN:	B. DUE PROCESS PROVISIONS: 1. INITIAL APPEAL/REVIEW	2. HEARING	3. SUBSEQUENT APPEAL	4. JUDICIAL REVIEW
MASSACHUSETTS Mass. Gen. Laws Ann. ch. 71B (1975)	State department of education. s.3	STATUTORY CATEGORY: Request hearing into evaluation of child and appropriate education program, upon refusal by parent or guardian of education program suggested by school. (see Chart II.B.2) s.3	BEFORE: Department of education's hearing bureau within division of special education. HOW INITIATED: Request by parent or guardian. CONDUCT OF HEARING: In accordance with state administrative procedure act, which act includes right to: 1) written notice of right to hearing, 2) reasonable notice of hearing, 3) full and fair hearing, 4) call, examine, and cross-examine witnesses, 5) counsel, 6) official record of hearing, 7) decision based only on evidence admitted at hearing and made part of record, 8) notice of decision and right to review or appeal. SCOPE OF REVIEW AND DECISION: Following hearing, department may recommend alternative educational placements. s.3	OF: Educational placement recommended by department of education following hearing. TO: State advisory commission on special education (SAC). HOW INITIATED: If parent or guardian rejects department's recommended placement and desires program other than regular education program, the matter shall be referred to SAC. PROCEDURE: Hearing by SAC at its next meeting. DECISION: SAC shall make determination re: placement of child within 30 days of meeting. s.3	OF: Educational placement determined by SAC (state advisory commission). TO: Superior court. SCOPE OF REVIEW: Court is authorized to order placement of child in appropriate educational program. s.3
MISSOURI Mo. Ann. Stat. (1975)	School (local or state) subject to appeal to board of education of district or to State Board (in case of state school) s.162.960.2	STATUTORY CATEGORY: 1) review of any diagnosis, evaluation or re-evaluation and of recommended assignment or change or denial of assignment by local school district. s.162.945. 2) Appeal of assignment by state department of education of severely handicapped children (with specified exceptions), to state schools. s.162.735 PROCEDURES: Hearing--(see Chart II.B.2.#1)	1. INITIAL APPEAL HEARING BEFORE: Chief administrative officer of school to which assignment has been made. HOW INITIATED: Written request to board of education within 10 days of date of notice to parent or guardian provided for in s.162.945 (see Chart I.C.1). WHEN: Not more than 30 days after receipt of request. CONDUCT OF HEARING: Informal--witnesses need not be sworn, no record need be made. School district or State Dept. of Education (in case of state school) shall see to it that parent or guardian or representative is advised of and permitted to review all diagnoses, evaluations and re-evaluations obtained by board of education or State Dept., and shall advise of each reason for taking the proposed action. Right to: present pertinent information, oral or written, to officer, and to cross-examine. s.162.960.1	OF: Case where no satisfactory solution is reached at initial hearing. TO: Board of education of district or in case of state school, to State Board. HOW INITIATED: By parent or guardian within 10 days of initial hearing. PROCEDURE: Hearing--(see Chart II.B.2 #2.) s.162.960.2	OF: Decision following appeal hearing, provided all administrative remedies have been exhausted. TO: Court. PROCEDURE: As set forth in s.536. s.162.965

STATE and STATUTE	II. RESOLUTION OF CONTROVERSY REGARDING EVALUATION OF PLACEMENT DECISION				
	A. RESPONSIBILITY VESTED IN:	B. DUE PROCESS PROVISIONS: 1. INITIAL APPEAL/REVIEW	2. HEARING	3. SUBSEQUENT APPEAL	4. JUDICIAL REVIEW
MISSOURI (continued)			2. SUBSEQUENT APPEAL HEARING BEFORE: Board of education or State Board (in case of state school), or designee.[17] s.162.960.2 WHEN: Not more than 30 days after receipt of request for appeal. Notice in writing of date, time, and place of hearing shall be given to parent or guardian at least 14 days prior to hearing. s.162.960.2 CONDUCT OF HEARING: Right to: 1) pre-hearing access by parent, guardian or representative, to any reports, records, evaluations or materials upon which action to be reviewed was based and which could reasonably bear on correctness of determination; 2) appear and be represented by counsel; 3) examine and cross-examine witnesses; 4) introduce evidence, s.160.960.3. A complete record, including verbatim transcription of all testimony and documents, shall be made. s.162.960.4 DECISION: Copy of decision and findings of fact shall be mailed on day of decision to parent or guardian by certified mail, return receipt requested. s.162.965		
NEBRASKA Neb. Rev. Stat. (1975)	State Department of Education. s.43-652	STATUTORY CATEGORY: Appeal by parent or guardian of child who believes that child is not in an appropriate program of special education. TO: State Department of Education. HOW INITIATED: By parent or guardian filing written appeal. PROCEDURE: Department shall review facts in case. DECISION: If Department determines program: 1) inappropriate, it shall assist school department in making appropriate placement; 2) appropriate, it shall notify parent or guardian in writing of finding and basis for it. s.43-652			
NEVADA Nev. Rev. Stat. (1975)					

[17] Board of education of district may designate person or persons not directly connected with original decision, and State Board of Education may designate member of staff of State Department, to hold hearing and recommend to board findings of fact and specific action based thereon. Mo. Ann. Stat. s.162.960.2 (1975)

STATE and STATUTE	II. RESOLUTION OF CONTROVERSY REGARDING EVALUATION OF PLACEMENT DECISION				
	A. RESPONSIBILITY VESTED IN:	B. DUE PROCESS PROVISIONS: 1. INITIAL APPEAL/REVIEW	2. HEARING	3. SUBSEQUENT APPEAL	4. JUDICIAL REVIEW
NORTH CAROLINA N.C. Gen. Stat. (1975)	Local school board or Advocacy Council for Human Resources, subject to appeal to State Superintendent of Public Instruction or to Secretary of Human Resources. s.115-179.1(b)	STATUTORY CATEGORY: Review/appeal of action or omission by state or local authorities on ground that child has been or is about to be: 1) denied entry or continuance in an appropriate program; 2) placed in n inappropriate, unsuitable or inadequate program, or 3) assigned to a special program when he is not a child with special need. s.115-179.1(a) HOW INITIATED: By parent or guardian's written request. PROCEDURE: Hearing--(see Chart II.B.2.) s.115-179.1(a)(b)	BEFORE: Local school board for educational matters or Advocacy Council for Human Resources[19] s.115-179.1(b) WHEN: 15-30 days from the date on which notice (to parent or guardian of right to hearing) was received. s.115.179.1(b) CONDUCT OF HEARING: Closed, unless otherwise requested by parent or guardian. s.115.179.(c) Right to: 1) access to reports, records, clinical evaluations, materials having any reasonable bearing on correctness of determination under review; 2) representation by counsel; 3) examine and cross-examine witnesses; 4) introduce evidence; 5) appear in person. Conduct of hearing also governed by rules and regulations of Superintendent of Public Instruction and Secretary of Human Resources. s.115.179.1(e)	OF: Decision following hearing. TO: State Superintendent of Public Instruction or Secretary of Human Resources. s.115.179.1(a)	OF: Decision following hearing and/or decision on appeal. TO: General Court of Justice. WHEN: Within 30 days after notice of decision. PROCEDURE: As provided in Article 33, c.143. s.115-179.1(a)(g)
OKLAHOMA Okla. Stat. Ann. (1975)					
OREGON Ore. Rev. Stat. (1975)	School board. Chapter 621, s.13, Oregon Laws, 1975		BEFORE: School board or its appointee. WHEN: Prior to placement, transfer or denial of placement, provided parent or guardian objects to such proposed action. Chapter 621, s.13, Oregon Laws, 1975		
SOUTH CAROLINA S.C. Compiled Laws Ann. (1975)					

19. If health or safety of child or other individual would be endangered by delaying change in assignment, change may be made sooner, but without prejudice to rights of child, parent or guardian pursuant to any law. N.C. Gen. Laws s.115-179 1(d) (1975).

STATE and STATUTE	II. RESOLUTION OF CONTROVERSY REGARDING EVALUATION OF PLACEMENT DECISION				
	A. RESPONSIBILITY VESTED IN:	B. DUE PROCESS PROVISIONS: 1. INITIAL APPEAL/REVIEW	2. HEARING	3. SUBSEQUENT APPEAL	4. JUDICIAL REVIEW
TENNESSEE Tenn. Code Ann. (1975)	County, city, special school district or state board of education. s.49-2947	STATUTORY CATEGORY: Review of action or omission by state or local authorities on ground that child has been or is about to be: a) denied entry or continuance in appropriate special education program; b) placed in inappropriate special education program; c) denied educational services because no suitable program is maintained; d)provided with special education insufficient in quantity to satisfy legal requirements; e) provided with special education or other education to which he is entitled only by those not having primary responsibility for providing those services; f) assigned to a special education program when he is not handicapped. PROCEDURE: Hearing--(see Chart II.B.2) s.49-2947	BEFORE: Hearing officer or hearing board.[22] HOW INITIATED: Written request of parent or guardian within 14 days of receipt of notice of right to request hearing. WHEN: 15-30 days from receipt of notice to parent or guardian of right to request hearing. CONDUCT OF HEARING: Right to: 1) access to reports, records, evaluations, other materials upon which determination under review was based and which could reasonably have bearing on correctness of determination; 2) appear in person; 3) representation by counsel; 4) examine and cross-examine witnesses; 5) introduce evidence. A full record of hearing shall be made, including transcript if requested by parent or guardian. Parent or guardian also has right to request, secure, and present report into evidence, of independent examination and evaluation of child, at state expense if indigent. State board of education rules and regulations govern other conduct of hearing. SCOPE OF REVIEW: Hearing officer or board has authority to affirm, reverse or modify prior action and to order appropriate action. s.49-2947		Determination of hearing officer or board is subject to judicial review in manner provided for judicial review of administrative decisions. s.49-2947
VERMONT Vt. Stat. Ann. tit. 16 (1975)	State board of education. s.2944(b)(2)	STATUTORY CATEGORY: Petition by parent or guardian of handicapped child who is allegedly not receiving necessary special education or of child who is allegedly improperly classified as handicapped child, to state board of education for correction of action or other remedial action. SCOPE OF REVIEW: State board has authority to order school district or commissioner or both to take necessary action. s.2944(b)(2)			
WASHINGTON Wash. Rev. Code (1975)	Superintendent of Public Instruction. s.28.A.13.060	STATUTORY CATEGORY: Appeal of decision of local school district superintendent to exclude a handicapped child from educational program. HOW INITIATED: By parent or guardian appeal to superintendent of public instruction. PROCEDURE: As established by superintendent. SCOPE OF REVIEW: Whether local decision was justified by the facts and consistent with legal requirements. Sanctions, including withholding state aid, are available against non-complying school districts. ss. 28A.13.060, 28A.13.070(6)			

22. As specified in rules and regulations of the state board of education, which shall require that hearing officer or board be a person or composed of persons other than those who participated in the action or who are responsible for the omission complained of. Tenn. Code Ann. s.49-2947 (1975).

STATE and STATUTE	II. RESOLUTION OF CONTROVERSY REGARDING EVALUATION OF PLACEMENT DECISION				
	A. RESPONSIBILITY VESTED IN:	B. DUE PROCESS PROVISIONS: 1. INITIAL APPEAL/REVIEW	2. HEARING	3. SUBSEQUENT APPEAL	4. JUDICIAL REVIEW
WISCONSIN Wis. Stat. Ann. (1975)	School board, subject to appeal to state superintendent. s.115.81(6),(7)	STATUTORY CATEGORY: Appeal of decision relating to special education if child has 1) been placed in special education program which parent belives is not satisfactory, or 2) not been placed in special education program and parent belives child would benefit from one. HOW INITIATED: By parent filing appeal within four months after school board has mailed parent notice of either, a) placement, or b) removal (see Chart I.C.1. #3), provided only one such appeal per year (one of placement, one of removal) may be initiated. PROCEDURE: Hearing--(see Chart II.B.2.) s.115.81(1), (2)(d)	BEFORE: School board. s.115.81(6) WHEN: Within 60 days of appeal. s.115.81(6) HOW INITIATED: By request of parent in accordance with required procedures set forth in notice to parent (see Chart I.C.1. #3). s.115.81(2)(d) CONDUCT OF HEARING: Right to: 1) access to reports, records, clinical evaluations, materials upon which decision relating to child's educational program was based or which could reasonably have bearing on correctness of decision; 2) determination of whether hearing shall be public or private; 3) appear in person; 4) be represented by an advocate; 5) examine and cross-examine witnesses; 6) introduce evidence; 7) detailed summary, upon request, of record of hearing which is required to be kept. s.115.81(4). Also, parent may obtain and present as evidence at hearing independent examination or evaluation, with reimbursement of costs by school district. s.115.81(5). DECISION: Based on hearing record and recommendation of multidisciplinary team, issued within 30 days of close of hearing. If no decision is made within 30 days, the decision appealed from shall be deemed affirmed. s.115.81(b)	OF: Decision of school board. TO: State superintendent. HOW INITIATED: By parent appeal within 30 days after school board decision. DECISION: Based on hearing record and recommendation of multidisciplinary team within 30 days of appeal. If no decision is made within 30 days following close of hearing, decision appealed from shall be deemed affirmed. s.115.81(7)	OF: Decision of state superintendent. TO: Circuit or county court. WHEN: Within 30 days after decision of state superintendent. s.115.81(8)

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS

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KEY TO CHARTS

1. PURPOSE AND SCOPE

The purpose of the attached charts on "Due Process Provisions in Special Education: State Administrative Provisions" is to present in detail for each state and the District of Columbia all major features of procedural due process in special education which are set forth in the state's administrative provisions on this subject.

A chart format was developed in order to present this information in a succinct, organized and readily available manner. The same format was utilized for every state in order to facilitate a comparative analysis of the provisions of the various states.

The source of these administrative provisions varies from state to state. It may consist of rules or regulations, guidelines, the state plan for special education required by Public Law 93-380 or 94-142, a handbook on due process procedures, or a combination of more than one of these sources.

Based upon our analysis of the relevant source materials, the administrative provisions described in the charts are those which were in effect in each state as of the end of April, 1976. Most of the source materials were received from the state education or special education directors who responded to letters sent to each of the 50 states requesting copies of current administrative provisions on the subject.[1] The precise source of information for each state is indicated on the charts, together with the date of the particular source document. Where such a document is in draft stage and not yet final, this is also indicated on the chart.

It should be noted that the charts set forth only those due process requirements in state special education which are contained in state **administrative** provisions. That is, the charts do not purport to cover either statutory or case law sources of due process requirements in state special education. For details on statutory sources for each state, see the chart entitled "Due Process Provisions in State Special Education Statutes." With regard to case law in the several states, it has been assumed that the few relevant court decisions have been incorporated in the statutes and administrative provisions.

In general, the state administrative provisions provide the most complete picture of the due process system of a given state. Nevertheless, the reader should review the statutory provisions, in addition to the administrative provisions, to be certain of having a total picture of the due process provisions in effect in a particular state.

2. HOW TO USE THE CHARTS

There are two parts to the chart for each state: Part I, which presents information for the referral, evaluation, and placement stage; and Part II, which presents information for the appeal stage.

Information pertaining to both Part I and Part II of the charts.

The name of the state appears in the upper left hand corner of the charts.

The names of the source documents containing the information appearing on the charts appear in the upper right hand corner. (See: "Administrative Provision")

Where the word "parent" appears on the chart, this term is intended to encompass "guardian" as well as parent.

"LEA" is an abbreviation for local education agency, and "SEA" for state education agency.

[1] The following states are not included in this survey because they did not respond to the request for information nor were we able to secure the needed information from other sources: Mississippi, and Missouri. See, however, chart on "Due Process Provisions in State Special Education Statutes" for the procedures in Missouri.

The basic categories appearing on the chart format, and the specific terminology within those categories, were, in each instance, selected as most representative of the commonalities of due process administrative provisions currently found in the 50 states.

Frequently, information is inserted on the chart of a given state in order to fully describe that state's provisions within the categories established by the chart format. When this insertion occurs, the language setting forth the information so inserted is generally the actual language used in the administrative document which served as the source of that information; the language of the source document has been changed only if clarification was deemed necessary, or in order to condense the original information.

Part I: Referral, Evaluation and Placement.

Part I sets forth due process provisions regarding referral, evaluation and placement.

These provisions are organized into four major categories which appear in the column to the far left: notice, consultation, consent, and other areas.

Notice. The large space at the top of Part I is used to describe the specific points in the pre-appeal stage at which notice is required to be sent: referral, evaluation, placement and other (e.g. notice of annual review of child's educational status).

For example, in Idaho, notices are required at three different phases: I. Evaluation, II. Placement and III. Annual review. (Note, however, that four different notices are required in Idaho because two separate notices of evaluation are required: I.A. Requesting permission to test, and I.B., School's going forward with assessment).

In addition to describing the referral process itself, the category "referral" includes due process requirements concerning identification and initial screening. The category "evaluation" is used to describe evaluation, assessment, and/or testing (different states use various of these terms in describing this stage of the process). The category "placement" includes not only due process provisions concerning placement and the educational program, but also due process provisions concerning the educational plan and child's educational status.

The remainder of the Notice section consists of 12 specific items, some of which are subdivided. These items represent a comprehensive list of major due process features found in notice provisions throughout the 50 states and the District of Columbia.

The columns appearing on the far right are used for indicating the stage at which the particular information set forth in the numbered items must be communicated, i.e., Referral, Evaluation, Placement, Other. An "X" is used where the reference is to a single notice requirement at a particular stage. Other letters (e.g., A and B) are used where there are multiple notice requirements at a particular stage. Thus, the reader should be familiar with the information appearing at the top of Part I before proceeding to read the remainder of the Notice section of Part I.

For example, in Idaho, the "X" appearing in the "Other" column under items 7 b. and 7 c. refers back to Roman numeral III described at the top of the chart; i.e., Annual review conference. Items 7 b. and 7 c. describe refinements of the notice required to be sent at this phase of the process.

In addition, after each of the 12 numbered items, there is a space where any specific information pertaining to that item may be spelled out. For example, in Idaho, under #2a., a description of the following specific information is required to be communicated: a decision to go forward with comprehensive **assessment**, and a decision regarding **placement**. The letter "B" in the Evaluation column to the right is a reference back to category I B. set forth in the space at the top. That is, the "B" means that of the two required notices regarding evaluation, it is the second one (I.B.) which requires notice of intent to go forward with a comprehensive assessment. By contrast, only one notice pertaining to **placement** is required in Idaho. Therefore, a simple "X" appears in the placement column to the right.

Occasionally, a state may require that a specific item of information be communicated more than once during one phase (e.g. evaluation). For example, in Idaho, a notice of the right to inspect and copy student records (#8.b) must be provided twice during the evaluation stage. This is indicated by the letters "A" and "B" inserted in the evaluation column to the right. In another state, such information might also be required a third time, e.g. at the placement stage. This would be indicated by an "X" in the placement column to the right.

Consultation: Information appearing in the space provided for this category is organized by Roman numerals referring to each specific instance where consultation is required or encouraged, e.g., referral, evaluation, or placement (Note that the numerals appearing here are not intended to correspond or refer back to the numerals appearing in the Notice category at the top of the chart).

Consent: See Consultation, immediately above.

Other: This space is provided for setting forth miscellaneous information regarding due process rights which do not fit into any of the above categories.

Footnotes: There are two footnotes for Part I which frequently recur. One is "Parents are not provided notice of this right", appearing where the **right** to consultation or consent (or other) is provided for, but where **notice** of such right is not required. The other is "See above under NOTICE", which means that not only is there a particular consultation or consent requirement, but in addition, parents have the right to receive notice of that consultation or consent provision. Such right to receive notice is independently indicated in the Notice section of the chart.

Part II: Appeal

The top of this chart provides spaces for describing the specific nature of the appeal process at three different stages: initial appeal, subsequent appeal, and judicial review.

The remainder of the chart is divided into three sections: Prehearing, Hearing, and Other. The columns to the right of these three sections are subdivided in two ways. First, they are subdivided by stage: Initial Appeal or Subsequent Appeal. Next, within each of these stages, there is a column indicating whether a given item of information detailed to the left is required to be communicated (Notice), or whether only the right to the procedure itself is given (Procedure), or whether both are given. The symbol "X" appearing in the relevant column indicates at which points of time (Initial or Subsequent Appeal) a specific requirement applies and, whether Notice or a Procedure, or both are required.

3. LIMITATIONS OF THE RESEARCH AND THE CHART FORMAT

In using the charts, the reader should be aware of the following limitations: 1) the chart format presents a great deal of information in a very condensed and abbreviated form; 2) the standard language on the chart format is not able to fully reflect the variation from state to state in the language used to describe the due process procedures; 3) the information appearing on the charts is derived exclusively from the documents received from each state; and 4) the charts do not address situations where there is a variation between the due process system as it is described in the formal documents and as it actually operates.

For all of these reasons, if the reader requires a complete and precise description of a due process system in a particular state, the use of the chart for that state should be supplemented by references to the state statute, regulations, state plan or other documents which were the basis for the information described on the chart.

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART I: REFERRAL, EVALUATION AND PLACEMENT.

STATE: Alabama — ADMINISTRATIVE PROVISION: State Plan for FY 1975 (March 1975)	CITATION	REFERRAL	EVALUATION	PLACEMENT	OTHER
DUE PROCESS PROVISIONS					
NOTICE to parent or guardian					
OF: I. Evaluation. WHEN: Prior to evaluation proceeding. FORM: Writing.	II.A.2.		X		
II. Placement/Education program: notice of any proposed change in child's education program (including proposals resulting from periodic reviews) or when parent's request for different placement of child is denied. WHEN: 15 days prior to proposed action. FORM: Orally and by certified mail.	II.A.3.			X	
ITEMS ON NOTICE:					
1. Request parent: permission to test, assess or observe, as part of evaluation			X		
2. Description of:					
a. Proposed or requested action, or decision:					
b. Reasons for action or decision: Evaluation; proposed change in program or denial of request for different placement			X	X	
3. Names of persons responsible for: initiating evaluation process			X		
4. Specification of tests, instruments or reports: on which proposed or requested program or placement is based				X	
5. When action involves placement or denial of placement:					
a. Description of alternative educational placements				X	
b. Reasons why such alternative placements are not appropriate for child					
6. Statement that parents will be informed of results of:					
7. Statement of opportunity/right to:					
a. Obtain independent evaluation				X	
(1) At expense of: public expense				X	
(2) Names, addresses and telephone numbers of public agencies offering free evaluation				X	
b. Meet and consult with school personnel concerning:					
c. Participate in committee meetings regarding:					
(1) Right to representation by:					
8. Statement of right to:					
a. Refuse to consent to: evaluation			X		
(1) However, LEA can request hearing to try to obtain approval			X		
b. Inspect and copy relevant student records			X	X	
c. Appeal					
d. Due process hearing, if parent objects to action				X	
9. Description of:					
a. Procedures for objecting to action or appealing decision					
b. Procedural rights at due process hearing: all procedural rights at hearing (unspecified)				X	
c. Procedures for appealing decision resulting from due process hearing				X	
10. List of community agencies offering legal counsel for indigents				X	
11. Declaration that child's educational status will not be changed without consent of parent, or until due process procedures have been exhausted. Consent must be written.			X	X	
a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by: hearing examiner				X	
12. Other:					
CONSULTATION with parent or guardian					
RE: Securing permission to evaluate child, after parents have initially refused to give permission.[1]	II.A.2.a.		X		
CONSENT by parent or guardian					
I. TO: Individual evaluation procedures (formal testing, informal assignments, observation).[1] WHEN: Prior to procedures. FORM: Written.	II.A.2.		X		
II. TO: Change in child's educational status.[1] FORM: Written.	II.A.2.			X	
OTHER AREAS of parental involvement or rights					

Footnotes

1. See above under NOTICE

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART II: APPEAL.

STATE: Alabama ADMINISTRATIVE PROVISION: State Plan for FY 1975 (March 1975)

STAGES OF APPEAL			CITATIONS
INITIAL APPEAL	I. By Parents of: (A) Parents' objection to proposed educational program or proposed change in existing program following periodic review or (B) Denial of parents' request for different placement of child.	PROCEDURE: Hearing. (See below)	II.A.3. II.A.4.
	II. By LEA of parents' refusal to give permission for evaluation procedures (testing, informal assessment, observation).	PROCEDURE: Hearing (See below)	II.A.2.a
SUBSEQUENT APPEAL	OF: Decision of hearing officer. TO: State Board of Education or impartial designee. HOW INITIATED: By request of LEA, or by parents' rejection of decision of hearing officer which constitutes automatic appeal. WHEN: Within 20 days of request or rejection. PROCEDURE: Conducted in accordance with "the due process procedure" or other statutes governing appeals of administrative proceedings.		II.A.2.d
JUDICIAL REVIEW			

DUE PROCESS PROVISIONS		INITIAL APPEAL NOTICE	INITIAL APPEAL PROCEDURE	SUBSEQUENT APPEAL NOTICE	SUBSEQUENT APPEAL PROCEDURE
PRE-HEARING	PRE-HEARING CONFERENCE with school officials				
	NOTICE OF: (See also CONDUCT OF HEARING)				
	1. Specification of tests, instruments or reports on which proposed placement is based.				
	2. Review and appeal procedures: Full due process rights in hearing requested by LEA. §II.A.2.b.	X			
	3. Names of:				
	4. Statement of right to:				
	a. Independent evaluation - opportunity for.		X		
	b. Inspect and copy relevant records - opportunity to.		X		
	c. Compel attendance at hearing of witnesses - opportunity to.		X		
	5. Exact time and place of hearing	X			
	OTHER:				
HEARING	BEFORE: Impartial hearing officer, person or tribunal: Unbiased, disinterested and independent of LEA. Employed by State Dept. of Education.		II.A.1.C.		
	WHEN: As set forth in notice to parents.	X			
	CONDUCT OF HEARING:				
	1. Fair and Impartial		X		
	2. Closed, unless open hearing is requested by: parents.		X		
	3. Right of				
	a. Compel attendance of witnesses		X		
	b. Representation by: including but not limited to counsel.		X		
	c. Present evidence and testimony		X		
	d. Confront and cross-examine adverse witnesses		X		
	e. Interpreters for deaf and/or fluent in primary language of home at public expense.		X		
	f. Attendance by minor child at option of parent, 1		X		
	4. Burden of proof on: LEA. Where LEA appeals, LEA must demonstrate that continued present placement of child is dangerous to child or others so that evaluation must be initiated as first step to special ed. placement.		X		
	5. Record of hearing: Verbatim. Copy must be provided to parents or LEA upon request.		X		
	SCOPE OF REVIEW: Appropriateness of proposed placement, why more normalized placements could not serve child's needs, and adequacy and appropriateness of tests or evaluation procedure.				
	DECISION FOLLOWING HEARING:				
	1. Scope:				
	a. Includes: Facts, conclusions, and reasons for each.		X		
	b. Based solely on evidence and testimony presented at hearing.		X		
	2. Form: In writing. Sent by certified mail to parents, LEA, and representatives.	X			
	3. Statement of rights sent with decision: Appeal procedures.	X			
	4. Other: Binding, subject to appeal.		X		
OTHER DUE PROCESS PROVISIONS	Summary of hearing proceeding shall be made available to parties at hearing, and should include any materials or statements specifically requested (by any of parties) to appear in record.	X			

Footnotes 1. Child may be excluded if hearing officer finds that attendance would be harmful.

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART I: REFERRAL, EVALUATION AND PLACEMENT.

STATE: Alaska	ADMINISTRATIVE PROVISION: Special Education Handbook (October 1975)	CITATION	REFERRAL	EVALUATION	PLACEMENT	OTHER
DUE PROCESS PROVISIONS						
NOTICE to parent or guardian	OF: Completion of evaluation and description of proposed placement. WHEN: Within 20 days after completion of education evaluation and proposed placement. FORM: Written.	Chapter Two		X	X	
	ITEMS ON NOTICE: 1. Request parent:					
	2. Description of: a. Proposed or requested action, or decision: Proposed placement.				X	
	b. Reasons for action or decision					
	3. Names of persons responsible for:					
	4. Specification of tests, instruments or reports:					
	5. When action involves placement or denial of placement: a. Description of alternative educational placements					
	b. Reasons why such alternative placements are not appropriate for child					
	6. Statement that parents will be informed of results of:					
	7. Statement of opportunity/right to: a. Obtain Independent evaluation			X		
	(1) At expense of:					
	(2) Names, addresses and telephone numbers of public agencies offering free evaluation					
	b. Meet and consult with school personnel concerning: Evaluation and proposed placement,			X	X	
	c. Participate in committee meetings regarding:					
	(1) Right to representation by:					
	8. Statement of right to: a. Refuse to consent to:					
	(1) However, LEA can request hearing to try to obtain approval					
	b. Inspect and copy relevant student records					
	c. Appeal					
	d. Due process hearing, if parent objects to action, upon request.				X	
	9. Description of: a. Procedures for objecting to action or appealing decision					
	b. Procedural rights at due process hearing:					
	c. Procedures for appealing decision resulting from due process hearing					
	10. List of community agencies offering legal counsel for indigents					
	11. Declaration that child's educational status will not be changed without consent of parent, or until due process procedures have been exhausted					
	a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by:					
	12. Other:					
CONSULTATION with parent or guardian	RE: Evaluation and proposed placement[1]	Chapter Two		X	X	
CONSENT by parent or guardian	TO: Special education placement.[1] WHEN: Prior to and as condition of placement.	Chapter Two			X	
OTHER AREAS of parental involvement or rights	Parents may request independent evaluation at their expense but Commissioner of Education may authorize state to pay.[2]					X
Footnotes	[1] See above under NOTICE. [2] Parents are not provided with notice of this right.					

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART II: APPEAL.

STATE: Alaska ADMINISTRATIVE PROVISION: Special Education Handbook (October 1975)

STAGES OF APPEAL		CITATION
INITIAL APPEAL	REGULATORY CATEGORY: Hearing to resolve discrepancy between (1) School evaluation and independent evaluation, and/or (2) Placement proposed by school and placement sought by parent. Appropriate placement will be determined.	Chapter Two
SUBSEQUENT APPEAL	OF: Decision of hearing officer. WHEN: Within 30 days. PROCEDURE: As provided in Rule 45 of Appellate Procedure of State of Alaska (Administrative Procedures Act, Alas. Stat. s.14.30.191(b)(c).)	Chapter Two
JUDICIAL REVIEW		

DUE PROCESS PROVISIONS		INITIAL APPEAL		SUBSEQUENT APPEAL	
		NOTICE	PROCEDURE	NOTICE	PROCEDURE
PRE-HEARING	PRE-HEARING CONFERENCE with school officials				
	NOTICE OF: (See also CONDUCT OF HEARING)				
	1. Specification of tests, instruments or reports on which proposed placement is based	X			
	2. Review and appeal procedures:				
	3. Names of:				
	4. Statement of right to:				
	a. Independent evaluation				
	b. Inspect and copy relevant records				
	c. Compel attendance at hearing of witnesses	X			
	5. Exact time and place of hearing				
	OTHER: Notice must include a discussion of proposed placement.	X			
HEARING	BEFORE: Hearing officer appointed by local school board chairman: Unbiased, impartial, and non-participant in formulation of evaluation and proposed placement.	X			
	WHEN: No later than 45 days after receipt of request for hearing.		X		
	CONDUCT OF HEARING:		X		
	1. Fair and impartial				
	2. Closed, unless open hearing is requested by : both parties.				
	3. Right of		X		
	a. Compel attendance of witnesses				
	b. Representation by: counsel.				
	c. Present evidence and testimony including expert testimony	X	X		
	d. Confront and cross-examine adverse witnesses	X	X		
	e. Interpreters for deaf and/or fluent in primary language of home	X			
	f. Attendance by minor child at option of parent				
	4. Burden of proof on: School district, as to all facts and as to appropriateness of educational evaluation and proposed placement.				
	5. Record of hearing: Tape recording to be made available to parents for a period not exceeding 30 days				
	SCOPE OF REVIEW:		X		
	DECISION FOLLOWING HEARING:				
	1. Scope:				
	a. Includes: Findings of fact and determination of appropriate placement.				
	b. Based solely on evidence and testimony presented at hearing		X		
	2. Form: Writing: Sent by certified mail to parents and counsel within 30 days after hearing.		X		
	3. Statement of rights sent with decision:	X			
	4. Other: (a) Filed with school board within 30 days after hearing (b) Final and binding unless appealed within 30 days.		X		
OTHER DUE PROCESS PROVISIONS	Pending determination of hearing officer, no action will be taken to effectuate proposed placement if parent objects in writing within 5 days of receipt of notice of hearing.				X

Footnotes

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART I: REFERRAL, EVALUATION AND PLACEMENT.

STATE: Arizona	ADMINISTRATIVE PROVISION: Special Education Conditions and Standards Relating to Identification and Placement (draft; 4/28/76)	CITATION §	REFERRAL	EVALUATION	PLACEMENT	OTHER
DUE PROCESS PROVISIONS						
NOTICE to parent or guardian	OP: I. Inability of school despite reasonable efforts to accomplish evaluation within 60 days of referral.	4.05		X		
	II. Specified rights in connection with placement. (See below)	5.02			X	
	ITEMS ON NOTICE:					
	1. Request parent:					
	2. Description of:					
	a. Proposed or requested action, or decision: Inability of school to accomplish evaluation within 60 days of referral; expected completion date:			X		
	b. Reasons for action or decision					
	3. Names of persons responsible for:					
	4. Specification of tests, instruments or reports:					
	5. When action involves placement or denial of placement:					
	a. Description of alternative educational placements					
	b. Reasons why such alternative placements are not appropriate for child					
	6. Statement that parents will be informed of results of:					
	7. Statement of opportunity/right to:			X		
	a. Obtain independent evaluation					
	(1) At expense of:					
	(2) Names, addresses and telephone numbers of public agencies offering free evaluation					
	b. Meet and consult with school personnel concerning:					
	c. Participate in committee meetings regarding:					
	(1) Right to representation by:					
	8. Statement of right to:					
	a. Refuse to consent to: Special education placement. Assurance that placement will not be changed without parental consent.				X	
	(1) However, LEA can request hearing to try to obtain approval					
	b. Inspect and copy relevant student records				X	
	c. ~~Appeal~~ Review of placement				X	
	d. Due process hearing, if parent objects to action					
	9. Description of:					
	a. Procedures for objecting to action or appealing decision					
	b. Procedural rights at due process hearing:					
	c. Procedures for appealing decision resulting from due process hearing					
	10. List of community agencies offering legal counsel for indigents					
	11. Declaration that child's educational status will not be changed without consent of parent, or until due process procedures have been exhausted					
	a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by:					
	12. Other: All communications to parent shall be in primary language of home. (Includes Consultation and Consent, below)					X
CONSULTATION with parent or guardian	I. RE: Home visit as part of evaluation, so long as parent consents.[1]	4.01.C.1		X		
	II. RE: Multi-disciplinary conference(s) re eligibility and placement in special education program. Mandatory unless written statement of non-participation.[1] WHEN: After evaluation.				X	
CONSENT by parent or guardian	I. Referral for evaluation. FORM: Must be documented.	3.01	X			
	II. Home visit as part of evaluation[1]	4.01.C.i		X		
	III. Placement[2] (including gifted children): initial; continued or changed following review.	4.06, 5.06, 5.07, 6.03			X	
OTHER AREAS of parental involvement or rights	Each district shall establish procedures for communicating the results of placement review to parents and obtaining their authorization for continuation or proposed change of placement. Suggestions include tape recorded statements of parents' understanding of their rights, where parents can't write. (5.06)	6.03				X
Footnotes	[1] Parents are not provided notice for this right. [2] See above under NOTICE.					

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART II: APPEAL.

STATE: Arizona — ADMINISTRATIVE PROVISION: Special Education Conditions and Standards Relating to Identification and Placement (draft; 4/28/76)

STAGES OF APPEAL		CITATION
INITIAL APPEAL	REGULATORY CATEGORY: Appeal to LEA where parent feels that evaluation procedure leading to education placement plan was not accomplished in a manner most beneficial to child's educational well-being. Written request for appeal must be within 21 days of receipt of plan and is automatic request for hearing. NOTE: If parent refuses to accept the plan, the matter is closed. Only parent, not school, has right to appeal.	§ 7.07 7.14
SUBSEQUENT APPEAL	OF: Decision of hearing officer. TO: Division of Special Education, State Dept. of Education. WHEN: Initiated within 10 days after hearing officer's decision is received. PROCEDURE: Due process hearing; limited to determining (1) whether all procedural requirements have been met and (2) whether decision of hearing officer is arbitrary or unreasonable in light of record.	7.15
JUDICIAL REVIEW	OF: Decision of Division of Special Education under ARS §12-901 et seq.	7.15.C.

DUE PROCESS PROVISIONS		INITIAL APPEAL		SUBSEQUENT APPEAL	
		NOTICE	PROCEDURE	NOTICE	PROCEDURE
PRE-HEARING	PRE-HEARING CONFERENCE with school officials				
	NOTICE OF: (See also CONDUCT OF HEARING)				
	1. Specification of tests, instruments or reports on which proposed placement is based				
	2. Review and appeal procedures:				
	3. Names of:				
	4. ~~Statement of~~ Right to:				
	a. Independent evaluation				
	b. Inspect and copy relevant records				
	c. Compel attendance at hearing of witnesses				
	5. Exact time and place of hearing				
	OTHER: Notice of hearing must comply with ARS 41-1009B, and shall be in English and primary language of home.	X		X	
HEARING	BEFORE: Impartial hearing officer - person or tribunal. Unbiased, disinterested and independent of LEA,		X		X
	WHEN:				
	CONDUCT OF HEARING:				
	1. Fair and Impartial		X		X
	2. Closed, unless open hearing is requested by :				
	3. Right of				
	a. Compel attendance of witnesses		X		X
	b. Representation by: Legal counsel and individuals with special knowledge or training re handicapped children.		X		X
	c. Present evidence and testimony including expert witnesses.		X		X
	d. Confront and cross-examine adverse witnesses		X		X
	e. Interpreters ~~for deaf and/or~~ fluent in primary language of home		X		X
	f. Attendance by minor child at option of parent				
	4. Burden of proof on:				
	5. Record of hearing: Written or electronic verbatim record to be on file and available for review on request		X		X
	INITIAL SCOPE OF REVIEW: Review of relevant facts, including independent evaluation. 2. Determination of LEA's procedural compliance.		X		X
	INITIAL DECISION FOLLOWING HEARING: 1. Scope: Whether: (a) evaluation procedures were appropriate; (b) diagnostic profile is verified; (c) child's rights have been observed; (d) placement has written consent of parent.		X		X
	a. Includes:				
	b. Based solely on evidence and testimony presented at hearing				
	2. Form: Written, in English and in primary language of home.		X		
	3. Statement of rights sent with decision:				
	4. Other: (a) Delivered to parents within 10 days following initial hearing (b) sent by certified mail within 30 days after subsequent appeal request	a		b	
OTHER DUE PROCESS PROVISIONS	No change in placement from time of request for appeal until decision from initial hearing. §7.08 If case is appealed following this decision, that decision shall nonetheless be adhered to unless hearing officer authorizes waiver. § 7.14		X		

Footnotes

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART I: REFERRAL, EVALUATION AND PLACEMENT.

STATE: Arkansas	ADMINISTRATIVE PROVISION: State Plan for Special Education (June 1975)	CITATION §	REFERRAL	EVALUATION	PLACEMENT	OTHER
DUE PROCESS PROVISIONS						
NOTICE to parent or guardian	OF:					
	I. Referral					
	A. Referral. WHEN: Within 5 days of receipt of referral.		X			
	B. Decision regarding referral, FORM: Writing.	III.	X			
	II. Evaluation: decision re outcome of evaluation. FORM: Writing.	III.		X		
	III. Results of screening or observation and of provision of services. FORM: Writing.	III.				X
	ITEMS ON NOTICE:					
	1. Request parent: To attend referral conference		A			
	2. Description of:					
	a. ~~Proposed or requested action, or~~ decision: Re referral; outcome of evaluation.		B	X		
	b. Reasons for ~~action or~~ decision: Re referral; outcome of evaluation.		B	X		
	3. Names of persons responsible for: carrying out referral and evaluation conference decisions.		B	X		
	4. Specification of tests, instruments or reports:					
	5. When action involves placement or denial of placement:					
	a. Description of alternative educational placements					
	b. Reasons why such alternative placements are not appropriate for child					
	6. Statement that parents will be informed of results of: Screening or observation.			X		
	7. Statement of opportunity/right to:					
	a. Obtain independent evaluation					
	(1) At expense of:					
	(2) Names, addresses and telephone numbers of public agencies offering free evaluation					
	b. Meet and consult with school personnel concerning:					
	c. Participate in committee meetings regarding:					
	(1) Right to representation by:					
	8. Statement of right to:					
	a. Refuse to consent to:					
	(1) However, LEA can request hearing to try to obtain approval					
	b. Inspect and copy relevant student records					
	c. Appeal decision re outcome of evaluation.			X		
	d. Due process hearing, if parent objects to action					
	9. Description of:					
	a. Procedures for ~~objecting to action or~~ appealing decision.			X		
	b. Procedural rights at due process hearing:					
	c. Procedures for appealing decision resulting from due process hearing					
	10. List of community agencies offering legal counsel for indigents					
	11. Declaration that child's educational status will not be changed without consent of parent, or until due process procedures have been exhausted					
	a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by:					
	12. Other: a. Rights under due process procedures to request evaluation, b. Results of screening or observation and of provision of services, c. Pertinent information regarding special education services, associated medical and social services, parent organizations and parent programs should be provided parents at time of evaluation notice.		a.	b., c.		b.
CONSULTATION with parent or guardian	I. RE: Referral[1] WHEN: Should be scheduled when parents may be present	§III	X			
	II. RE: Evaluation conference[2] - attendance of parents and child is optional.	§III		X		
CONSENT by parent or guardian						
OTHER AREAS of parental involvement or rights	Counseling services and assistance in interpretation of education decisions or in re special education services should be made available to parents.	§III				X

Footnotes 1 See above under NOTICE.
2 Parents are not provided notice of this option.

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART II: APPEAL.

STATE: Arkansas ADMINISTRATIVE PROVISION: State Plan for Special Education (June 1975)

STAGES OF APPEAL		CITATION
INITIAL APPEAL	There are no specific provisions describing an appeal process or due process rights at Initial Appeal/Review, upon Subsequent Appeal, or of Judicial Review. However, as noted on the preceding page, the notice provisions of the Arkansas State Plan for Special Education does state the existence of a right to appeal and of due process procedures upon such appeal.	§III.
SUBSEQUENT APPEAL		
JUDICIAL REVIEW		

DUE PROCESS PROVISIONS		INITIAL APPEAL NOTICE	INITIAL APPEAL PROCEDURE	SUBSEQUENT APPEAL NOTICE	SUBSEQUENT APPEAL PROCEDURE
PRE-HEARING	PRE-HEARING CONFERENCE with school officials				
	NOTICE OF: (See also CONDUCT OF HEARING)				
	1. Specification of tests, instruments or reports on which proposed placement is based				
	2. Review and appeal procedures:				
	3. Names of:				
	4. Statement of right to:				
	a. Independent evaluation				
	b. Inspect and copy relevant records				
	c. Compel attendance at hearing of witnesses				
	5. Exact time and place of hearing				
	OTHER:				
HEARING	BEFORE:				
	WHEN:				
	CONDUCT OF HEARING:				
	1. Fair and Impartial				
	2. Closed, unless open hearing is requested by :				
	3. Right of				
	a. Compel attendance of witnesses				
	b. Representation by:				
	c. Present evidence and testimony				
	d. Confront and cross-examine adverse witnesses				
	e. Interpreters for deaf and/or fluent in primary language of home				
	f. Attendance by minor child at option of parent				
	4. Burden of proof on:				
	5. Record of hearing:				
	SCOPE OF REVIEW:				
	DECISION FOLLOWING HEARING:				
	1. Scope:				
	a. Includes:				
	b. Based solely on evidence and testimony presented at hearing				
	2. Form:				
	3. Statement of rights sent with decision:				
	4. Other:				
OTHER DUE PROCESS PROVISIONS					

Footnotes

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART I: REFERRAL, EVALUATION AND PLACEMENT.

STATE: California	ADMINISTRATIVE PROVISION: Hearing Procedures for Pupil Placement in Development Centers for the Handicapped (Sept. 1975).	CITATION	REFERRAL	EVALUATION	PLACEMENT	OTHER
DUE PROCESS PROVISIONS						
NOTICE[1] to parent or guardian	I. OF: Meeting by Admission Committee to consider eligibility of pupil for referral, identification, placement or denial of services. WHEN: 15 Days prior to meeting.	§18133 (a)	X	X	X	X
	II. OF: Committee's recommendations - concise statement together with reason. WHEN: Within 10 days after committee meeting. FORM: Mailed or served.	§18133 (b)	X	X	X	X
	ITEMS ON NOTICE:					
	1. Request parent:					
	2. Description of:					
	a. Proposed or requested action, or decision: Proposed action; recommendations.		I,II	I,II	I,II	I,II
	b. Reasons for action or decision: Recommendation.		II	II	II	II
	3. Names of persons responsible for:					
	4. Specification of tests, instruments or reports:					
	5. When action involves placement or denial of placement:					
	a. Description of alternative educational placements					
	b. Reasons why such alternative placements are not appropriate for child					
	6. Statement that parents will be informed of results of:					
	7. Statement of opportunity/right to:					
	a. Obtain independent evaluation					
	(1) At expense of:					
	(2) Names, addresses and telephone numbers of public agencies offering free evaluation					
	b. Meet and consult with school personnel concerning:					
	c. Participate in committee meetings regarding: Proposed action. Parent has right to present information.		I	I	I	I
	(1) Right to representation by: Unspecified.		I	I	I	I
	8. Statement of right to:					
	a. Refuse to consent to:					
	(1) However, LEA can request hearing to try to obtain approval					
	b. Inspect and copy relevant student records					
	c. Appeal					
	d. Due process hearing, if parent objects to action					
	9. Description of:					
	a. Procedures for objecting to action or appealing decision - recommendations of Committee.		II	II	II	II
	b. Procedural rights at due process hearing:					
	c. Procedures for appealing decision resulting from due process hearing					
	10. List of community agencies offering legal counsel for indigents					
	11. Declaration that child's educational status will not be changed without consent of parent, or until due process procedures have been exhausted					
	a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by:					
	12. Other: Time, date, location of meeting; right to present relevant information, including medical testimony (if independent evaluation has been conducted). Right to have interpreter (school district may provide).		I	I	I	I
CONSULTATION with parent or guardian						
CONSENT by parent or guardian						
OTHER AREAS of parental involvement or rights						

Footnotes [1] See also pages following Part II of the Chart.

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART II: APPEAL.

STATE: California — ADMINISTRATIVE PROVISION: Hearing Procedures for Pupil Placement in Development Centers for the Handicapped. (Sept. 1975)

STAGES OF APPEAL		CITATION
INITIAL APPEAL	REGULATORY CATEGORY: Appeal of Admission Committee's recommendations within 30 days following notice to parent. (Extension of time for good cause).	§18134-18138
SUBSEQUENT APPEAL	OF: Decision of governing or hearing board. TO: Superintendent of Public Instruction. WHEN: Within 30 days following notice of decision. PROCEDURE: Review of record of hearing. Opportunity to present oral or written argument. Decision within 15 days after argument or appeal. Copy to parent with notice of right to appeal to court.	18139
JUDICIAL REVIEW	OF: Decision of Superintendent of Public Instruction. TO: Court of competent jurisdiction.	18139

DUE PROCESS PROVISIONS		INITIAL APPEAL		SUBSEQUENT APPEAL	
		NOTICE	PROCEDURE	NOTICE	PROCEDURE
PRE-HEARING	PRE-HEARING CONFERENCE with school officials				
	NOTICE OF: (See also CONDUCT OF HEARING)				
	1. Specification of tests, instruments or reports on which proposed placement is based				
	2. Review and appeal procedures:				
	3. Names of:				
	4. Statement of right to:				
	a. Independent evaluation				
	b. Inspect and copy relevant records				
	c. Compel attendance at hearing of witnesses				
	5. Exact time and place of hearing - 15 days prior to hearing.	X			
	OTHER:				
HEARING	BEFORE: School district governing board, or (at discretion of board) Hearing Board - 3 persons knowledgeable in needs of handicapped pupil: impartial, unbiased, disinterested & not an employee or agent of school		X		
	WHEN: 30-45 days following receipt of District Governing Board.[1] request for appeal.		X		
	CONDUCT OF HEARING: Informal.		X		
	1. Fair and impartial				
	2. Closed, unless open hearing is requested by :				
	3. Right of				
	a. Compel attendance of witnesses				
	b. Representation by: Unspecified.		X		
	c. Present evidence and testimony		X		X
	d. Confront and cross-examine adverse witnesses		X		
	e. Interpreters for deaf and/or fluent in primary language of home - must be approved by chairman of governing board.		X		
	f. Attendance by minor child at option of parent				
	4. Burden of proof on:				
	5. Record of hearing:		X		
	SCOPE OF REVIEW: Rules of evidence need not apply: Relevant evidence shall be admitted if of the sort responsible persons rely on in making serious decisions. Hearsay admissible only to supplement or explain. Irrelevant or		X		
	DECISION FOLLOWING HEARING: unduly repetitious evidence may be excluded.				
	1. Scope: Based on majority decision of members.				
	a. Includes: Fact, issues and reasons for each.		X		X
	b. Based solely on evidence and testimony presented at hearing		X		
	2. Form: Written - sent within 25 days of completion of hearing - in primary language of pupil's home.	X		X	
	3. Statement of rights sent with decision: Appeal to Superintendent of Public Instruction.	X	X	X	
	4. Other:				
OTHER DUE PROCESS PROVISIONS	Pending appeal, pupil shall remain in present program, or, if initial admission application, be placed in program recommended by Committee with consent of parent. If threat of injury, however, child may be excluded from program.				X

Footnotes

[1] One person selected by school board, one by parent, & one by mutual agreement of those 2 people. Further provisions covering failure to select are set forth - see § 18136.

Editorial Note: California statutes set forth relatively extensive due process provisions for several categories of children: individuals with exceptional needs; mentally retarded pupils; educationally handicapped pupils; physically handicapped pupils; and exceptional children for whom no appropriate educational services are available or can reasonably be provided - the private schooling provision. Administrative due process provisions covering all of these categories are set forth on the chart, Part I and Part II. In addition, there are specific administrative regulations for the private schooling provision of the statute.

California Administrative Code Title 5 Regulations Pertaining to Private Schooling for the Handicapped (Educational Code Section 6870-6874.6) (May 1 , 1973). The due process provisions set forth in this Code are described below:

PART I: REFERRAL, EVALUATION AND PLACEMENT

NOTICE:

I. OF: School district's determination whether pupil is eligible for special education services authorized by the Education Code Section 6870.
WHEN:Within 45 days of receipt of parent or guardian's request for determination of eligibility.
FORM: (1) Writing; (2) In primary language of home. §3120 (a)(1)

II. OF: (1) Approval or denial by local governing board or its designee of application for services under California Education Code Sections 6870-6874.6(2). Editorial note: (eligibility for services is a prerequisite to acceptance of an application for services.§3120(a))If denial, (a) Reasons for denial and (b) Right to appeal to county superintendent of schools.
WHEN: Within 30 days of receipt of application.
FORM: (1) Writing; (2) In primary language of home. §3120(a)(2)

III.OF: (1) Approval or denial by county superintendent of school of application previously approved by local governing board or its designee;(2) If denial: (a) Reasons for denial and (b) Right to appeal to State Department of Education.
WHEN: Within 30 days of receipt of approved application submitted by local governing board of district or residence.
FORM: (1) Writing; (2) In primary language of home. § 3120 (a)(2)(B)

IV. OF: (1) Approval by State Department of Education of application; (2) Effective date of approval; (3) Approximate amount of total tuition reimbursement; (4) Manner in which parent or guardian is to be reimbursed.
WHEN: Within 30 days of receipt of application approved and forwarded by county superintendent of schools, Department shall examine application for compliance with applicable laws and regulations and issue an authorization to local school district. Local school district then must notify the parent or guardian of the above.
FORM: (1) Writing. (2) Primary language of home. §3120(a)(2)(B)

V. OF: Right to request pupil's attending physician (or optometrist if pupil has vision-related disorder) to recommend private school placement.
WHEN: At time of original application.
FORM: (1) Writing; (2) Primary language of home. §3120 (a)(D)

VI. OF: Receipt by school district from pupil's attending physician or optometrist of recommendation for private school placement.
WHEN: Upon receipt by school district of such recommendation.
FORM: (1) Writing; (2) In primary language of home. § 3120 (a)(2)(E)

VII.OF: (1) Approval or denial by county superintendent of schools and county health officer of application for services under California Education Code Section 6870-6874.6. (2) If denied: Right to submit written appeal to State Department of Education.
WHEN: Within 30 days of receipt of application(based on recommendation of physician or optometrist) from school district.
FORM: (1) Writing; (1) In primary language of home, §3120(a)(2)(E)1.

VIII.OF: (1) Approval or denial by district school or county superintendent of parent or guardian's application for continuation (renewal) of services pursuant to California Education Code Sections 6870-6874.6;(2) If approved:(a) Effective date of approval; (b) approximate amount of total tuition payment, and (c) manner by which parent or guardian will be reimbursed.
FORM: (1) Writing; (2) In primary language of home. §3120 (d)(2),(3)

IX. OF: Status of renewal of application.
WHEN: Prior to July 30 of each year.
FORM: (1) Writing; (2) In primary language of home. § 3120 (d)(4)

X. OF: Whether pupil continues to be eligible for services under California Education Code Section 6871.
WHEN: Following review of psycho-educational study during third consecutive year of pupil's enrollment in a private school.
FORM: (1) Writing; (2) In primary language of home. § 3120 (d)(5)

IX. OF: (1) Time, date and place of scheduled meeeting of (a) admission committee to determine eligibility for tuition payment in private school; and (b) county superintendent; review of the same. Purpose: So parent, guardian or representative can propose and present oral or written argument at such meeting.
WHEN: Must be received no later than 10 days prior to date of meeting.
FORM: (1) Writing; (2) In primary language of home. § 3121 (a)(d)

CONSULTATION

RE: (1) Determination of eligibility (for payment of tuition in private school) by admission committee convened by school district of residence; (2)Parent or guardian or representatives shall be afforded the opportunity to present oral or written argument justifying private school placement. Such opportunity must be afforded at two different stages of the process: (a) by local school district and (b) by county superintendent of schools and county health officer. § 3121 (a)(d)

PART II: APPEAL

INITIAL APPEAL

I. REGULATORY CATEGORY: Appeal to county superintendent of: Denial by governing board of local school district (or its designee) of application for services under California Education Code Sections 6870-6874.b.
WHEN:Within 10 days following receipt by parent or guardian of notification of denial by school district. § 3120(a)(2)(A)
II. REGULATORY CATEGORY: Appeal to county superintendent of refusal by a new school district of residence, following change of pupil's residence, to provide placement or payment of tuition previously authorized pursuant to California Education Code Section 6871.
DECISION: (1) County superintendent shall render its decision within 7 days after receipt of appeal; (2) Tuition payments shall be retroactive to the date of change of residence. § 3120 (a)(4)
III. REGULATORY CATEGORY: Appeal of denial by county superintendent of schools of application for services under California Education Code Section 6871 previously approved by the governing board of school district to State Department of Education.
WHEN: Within 10 days following receipt of county superintendent of school's decision.
FORM: Written.
DECISION: (1) Department of Education shall approve or deny application within 30 days of receipt of appeal; (2) If denied: (a) Reasons shall be stated; and (b) Parent or guardian shall be informed in writing, in primary language of home, of action taken; (3) Decision of Department is final. § 3120 (a)(2)(B)(3)(C)
IV. REGULATORY CATEGORY: Appeal of denial by county superintendent of schools and county health officer of application for private school placement based on recommendation of attending physician or optometrist to State Department of Education.
HOW INITIATED: Written.
PROCEDURE: See below.
DECISION: Department of Education shall approve or deny request for private school placement within 30 days of receipt of application to Department of Education from county superintendent and county health officer. § 3120(a)(2)(E)
V. REGULATORY CATEGORY: Appeal of denial by county health officer and county superintendent of schools of application for 24 hour residential placement recommended by pupil's attending physician to Department of Education.
WHEN: Within 10 days following receipt of decision denying application.
FORM: Written.
PROCEDURE: See below.
DECISION: (1) Department of Education shall affirm or reverse decision of county health officer and county superintendent of schools within 30 days following receipt of appeal;(2) In writing, in primary language of home; (3) If reversal: (a) Statement of reasons; (b) Notify parent or guardian of action taken; (c) Decision of Department shall be final. § 3120 (d)
PROCEDURE: Of review by State Department of Education: (1) State Department of Education shall review the application and findings of county superintendent and county health officer concerning the appropriateness of designated public special education class; (2) County superintendent shall submit to department of Education the following information: (a) Documentation included as part of application; (b) Written report submitted by parent or guardian or representative justifying private school placement; (c) Findings regarding observation of pupil in school environment, on-sight observation of designated public special education class including interview with special class teacher, and summary of reasons for denial of services; (3) After review of the information listed immediately above under (2), the Department: (a) Shall make a determination; or (b) May convene a committee to re-examine the application and accompanying documents.

The committee shall be composed of the following members: a Department representative who shall act as chairman; a representative from the office of a county superintendent of schools; a program consultant from the State Department of Education or the office of a county superintendent of schools or a school district; and, a district administrator in charge of special education. The representative so elected as members of the Appeal Review Committee shall not be employees of the school district or county wherein the application originated. The committee may take any necessary steps to determine if the available public special education class meets the pupil's health and welfare needs as recommended by the pupil's attending physician or optometrist. The findings of the committee shall be reported to the State Superintendent of Public Instruction or his designee who in turn shall inform the parent or guardian in writing, in the primary language of the home, and also inform the school district, the county superintendent of schools, and the county health officer of the Department's determination. The Superintendent of Public Instruction or his designee shall also orally inform the parent or guardian of the Department's reasons for approving or denying the appeal. The action of the Department shall be final and shall occur no later than 30 days following receipt of the appeal submitted by the parent or guardian. § 3125

SUBSEQUENT APPEAL

OF: Decision of county superintendent affirming, upon appeal by parent, refusal of new school district of residence to provide placement or payment of tuition.
TO: State Department of Education.
DECISION: (1) Within 7 days after receipt of appeal; (2) Tuition payments shall be retroactive to date of change of residence. § 3120(c)(4)

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART I: REFERRAL, EVALUATION AND PLACEMENT.

STATE: Colorado	ADMINISTRATIVE PROVISION: Rules for the Administration of the Handicapped Children's Educational Act (Nov. 1974)	CITATION §	REFERRAL	EVALUATION	PLACEMENT	OTHER
DUE PROCESS PROVISIONS						
NOTICE to parent or guardian	OF: I. Procedures to appeal assessment and placement. FORM: Written.	2220-R-7.05(2)(a)		X	X	
	II. Copy of annual review of child's placement status. FORM: Written.	2220-R-7.05 (4)			X	
	ITEMS ON NOTICE:					
	1. Request parent:					
	2. Description of:					
	a. Proposed or requested action, or decision: Copy of annual review of placement status.				II	
	b. Reasons for action or decision					
	3. Names of persons responsible for:					
	4. Specification of tests, instruments or reports:					
	5. When action involves placement or denial of placement:					
	a. Description of alternative educational placements					
	b. Reasons why such alternative placements are not appropriate for child					
	6. Statement that parents will be informed of results of:					
	7. Statement of opportunity/right to:					
	a. Obtain independent evaluation					
	(1) At expense of:					
	(2) Names, addresses and telephone numbers of public agencies offering free evaluation					
	b. Meet and consult with school personnel concerning:					
	c. Participate in committee meetings regarding:					
	(1) Right to representation by:					
	8. Statement of right to:					
	a. Refuse to consent to:					
	(1) However, LEA can request hearing to try to obtain approval					
	b. Inspect and copy relevant student records					
	c. Appeal					
	d. Due process hearing, if parent objects to action					
	9. Description of:					
	a. Procedures for objecting to action or appealing decision: Re evaluation, placement			I	I	
	b. Procedural rights at due process hearing:					
	c. Procedures for appealing decision resulting from due process hearing					
	10. List of community agencies offering legal counsel for indigents					
	11. Declaration that child's educational status will not be changed without consent of parent, or until due process procedures have been exhausted					
	a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by:					
	12. Other:					
CONSULTATION with parent or guardian	I. RE: Proposed determination that child is handicapped.[1] WHEN: Prior to such determination.	§ 2220-R-7.05(2)(I and II		X		
	II. RE: Determination that child is handicapped.[1] PROCEDURE: Parents may present expert testimony to school officials.			X		
CONSENT by parent or guardian	TO: Individually administered battery of psychological tests for placement in special education program.[2] WHEN: Prior to testing FORM: Writing.	§ 2220-R-7.05(1)				
OTHER AREAS of parental involvement or rights						

Footnotes
[1] Parents are not provided with notice of the right to this consultation.
[2] Parents are not provided with specific notice of the right to refuse to consent.

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART II: APPEAL.

STATE: Colorado — ADMINISTRATIVE PROVISION: Rules for the Administration of the Handicapped Children's Education Act (Nov. 1974)

STAGES OF APPEAL		CITATION
INITIAL APPEAL	REGULATORY CATEGORY: Parents' appeal of proposed enrollment of eligible handicapped child in special education program. TO: Local board of education. PROCEDURE: Parents may bring legal counsel and present expert testimony.	§ 2220-R -7.05(2) (c)(3)
SUBSEQUENT APPEAL		
JUDICIAL REVIEW		

DUE PROCESS PROVISIONS		INITIAL APPEAL NOTICE	INITIAL APPEAL PROCEDURE	SUBSEQUENT APPEAL NOTICE	SUBSEQUENT APPEAL PROCEDURE
PRE-HEARING	PRE-HEARING CONFERENCE with school officials				
	NOTICE OF: (See also CONDUCT OF HEARING)				
	1. Specification of tests, instruments or reports on which proposed placement is based				
	2. Review and appeal procedures:				
	3. Names of:				
	4. Statement of right to:				
	a. Independent evaluation				
	b. Inspect and copy relevant records				
	c. Compel attendance at hearing of witnesses				
	5. Exact time and place of hearing				
	OTHER:				
HEARING	BEFORE: Local board of education		X		
	WHEN:				
	CONDUCT OF HEARING:				
	1. Fair and impartial				
	2. Closed, unless open hearing is requested by:				
	3. Right of				
	a. Compel attendance of witnesses				
	b. Representation by: counsel,		X		
	c. Present evidence and testimony - expert testimony,		X		
	d. Confront and cross-examine adverse witnesses				
	e. Interpreters for deaf and/or fluent in primary language of home				
	f. Attendance by minor child at option of parent				
	4. Burden of proof on:				
	5. Record of hearing:				
	SCOPE OF REVIEW:				
	DECISION FOLLOWING HEARING:				
	1. Scope:				
	a. Includes:				
	b. Based solely on evidence and testimony presented at hearing				
	2. Form:				
	3. Statement of rights sent with decision:				
	4. Other:				
OTHER DUE PROCESS PROVISIONS					

Footnotes

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART I: REFERRAL, EVALUATION AND PLACEMENT.

STATE: Connecticut	ADMINISTRATIVE PROVISION: Proposed Procedures for State Board of Education Review of Programs for Children Requiring Special Education, Section 10-76h of the General Statutes.[1]	CITATION	REFERRAL	EVALUATION	PLACEMENT	OTHER
DUE PROCESS PROVISIONS						
NOTICE to parent or guardian	OF: For due process provisions, see statutory references described on the chart entitled "Due Process Provisions in State Special Education Statutes".					
	ITEMS ON NOTICE:					
	1. Request parent:					
	2. Description of:					
	a. Proposed or requested action, or decision:					
	b. Reasons for action or decision					
	3. Names of persons responsible for:					
	4. Specification of tests, instruments or reports:					
	5. When action involves placement or denial of placement:					
	a. Description of alternative educational placements					
	b. Reasons why such alternative placements are not appropriate for child					
	6. Statement that parents will be informed of results of:					
	7. Statement of opportunity/right to:					
	a. Obtain independent evaluation					
	(1) At expense of:					
	(2) Names, addresses and telephone numbers of public agencies offering free evaluation					
	b. Meet and consult with school personnel concerning:					
	c. Participate in committee meetings regarding:					
	(1) Right to representation by:					
	8. Statement of right to:					
	a. Refuse to consent to:					
	(1) However, LEA can request hearing to try to obtain approval					
	b. Inspect and copy relevant student records					
	c. Appeal					
	d. Due process hearing, if parent objects to action					
	9. Description of:					
	a. Procedures for objecting to action or appealing decision					
	b. Procedural rights at due process hearing:					
	c. Procedures for appealing decision resulting from due process hearing					
	10. List of community agencies offering legal counsel for indigents					
	11. Declaration that child's educational status will not be changed without consent of parent, or until due process procedures have been exhausted					
	a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by:					
	12. Other:					
CONSULTATION with parent or guardian						
CONSENT by parent or guardian						
OTHER AREAS of parental involvement or rights						

Footnotes [1] All due process provisions set forth in these Proposed Procedures operate at the appeals phase. See Chart, Part II.

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART II: APPEAL.

STATE: Connecticut	ADMINISTRATIVE PROVISION: Proposed Procedures for State Board of Education Review of Programs for Children Requiring Special Education, Section 10-265 of the General Statutes (1975)	CITATION
STAGES OF APPEAL		
INITIAL APPEAL	CATEGORY: Review of (1) Diagnosis (2) Evaluation or (3) Exclusion or exemption from school privileges. HOW INITIATED: Request for review by parent, followed by notice to parent. (See below). PROCEDURE: Hearing. (See below) In addition: Hearing board may require complete and independent diagnosis, evaluation and prescription of program at cost of local board. (a) If before hearing, hearing may be extended up to 90 days after request for review; (b) after close of hearing, copy of report shall be sent to parties. W/in 5 days of receipt of report either party may submit written materials regarding report or request that hearing be reopened to permit evidence regarding the report. W/in 10 days of such request, the board shall reopen hearing for	III, IV
SUBSEQUENT APPEAL	sole purpose of receiving evidence regarding report. Decision of hearing board shall in such cases be within 30 days of completion of diagnosis, evaluation or prescription.	
JUDICIAL REVIEW	BY: Court pursuant to § 10-76h(e) of Connecticut General Statutes.	V

DUE PROCESS PROVISIONS		INITIAL APPEAL NOTICE	INITIAL APPEAL PROCEDURE	SUBSEQUENT APPEAL NOTICE	SUBSEQUENT APPEAL PROCEDURE
PRE-HEARING	PRE-HEARING CONFERENCE with school officials				
	NOTICE OF: (See also CONDUCT OF HEARING)				
	1. Specification of tests, instruments or reports on which proposed placement is based				
	2. Review and appeal procedures: Hearing to be held within 30 days of receipt of request, unless 30 day extension is requested within specified time	X			
	3. Names of:				
	4. Statement of right to:				
	a. Independent evaluation at parent's expense.	X			
	b. Inspect and copy relevant records including tests of child.	X	X		
	c. Compel attendance at hearing of witnesses				
	5. Exact time and place of hearing: Notice must be sent at least 15 days before hearing.	X			
	OTHER: Notice must be sent within 7 days of request for review. Form of notice - registered mail.	X			
HEARING	BEFORE: Hearing board established by State Board of Education.		X		
	WHEN: Within 30 days of receipt of request for review, unless extended by up to 30 additional days by parents' request made within 10 days of original request.		X		
	CONDUCT OF HEARING:				
	1. Fair and impartial				
	2. Closed, unless open hearing is requested by:		X		
	3. Right of				
	a. Compel attendance of witnesses		X		
	b. Representation by: Including legal counsel,	X	X		
	c. Present evidence and testimony; including expert testimony,	X	X		
	d. Confront and cross-examine adverse witnesses,	X	X		
	e. Interpreters for deaf and/or fluent in primary language of home				
	f. Attendance by minor child at option of parent				
	4. Burden of proof on: Local board of education as to facts and appropriateness of diagnosis, evaluation, or exclusion or exemption.		X		
	5. Record of hearing: Right to record and transcript upon request.		X		
	SCOPE OF REVIEW: (1) Issue of hearing: whether program is suitable, (not cost). (2) Hearing board has authority to confirm, modify or reject local board action and to prescribe alternate program.	X	X		
	DECISION FOLLOWING HEARING:				
	1. Scope:				
	a. Includes: Findings of fact and law		X		
	b. Based solely on evidence and testimony presented at hearing		X		
	2. Form: In writing within 60 days of first meeting of hearing board; sent by registered mail to parties.	X	X		
	3. Statement of rights sent with decision: Right to appeal to court within 30 days.	X			
	4. Other:				
OTHER DUE PROCESS PROVISIONS	Pending hearing board's decision, child shall remain in educational program provided by local board of education prior to request for review. Parents who unilaterally take child out of public school and place in private school do not lose rights to review of public school program but do assume risk that hearing board will not require local board of education to bear costs of private placement.		§V		
Footnotes					

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART I: REFERRAL, EVALUATION AND PLACEMENT.

STATE: Delaware	ADMINISTRATIVE PROVISION: Rules and Regulations to Implement the Subsection of the Delaware State Code for Exceptional Children. (June 1974)	CITATION §	REFERRAL	EVALUATION	PLACEMENT	OTHER
DUE PROCESS PROVISIONS						
NOTICE to parent or guardian	OF: I. Evaluation: Need for case study evaluation. WHEN: Prior to evaluation.	H.8.6		X		
	II. Placement A. Determination that educational plan involves initial placement in special school or program. WHEN: Minimum 10 days prior to proposed placement. FORM: Conference or letter.	I.9.4			X	
	B. Ongoing special education placement. WHEN: Annual.	I.9.9			X	
	C. Major changes in placement, or termination of placement. FORM: Conference or letter.	I.9.10, 11.			X	
	ITEMS ON NOTICE: 1. Request parent:					
	2. Description of: a. Proposed ~~or requested~~ action; ~~or decision~~: Implementation plans.				A,C	
	b. Reasons for action or decision: Placement decision.				A,C	
	3. Names of persons responsible for:					
	4. Specification of tests, instruments or reports:				A,C	
	5. When action involves placement or denial of placement: a. Description of alternative educational placements				A,C	
	b. Reasons why such alternative placements are not appropriate for child					
	6. Statement that parents will be informed of results of:					
	7. Statement of opportunity/right to: a. Obtain independent evaluation (1) At expense of:					
	(2) Names, addresses and telephone numbers of public agencies offering free evaluation					
	b. Meet and consult with school personnel concerning:					
	c. Participate in committee meetings regarding:					
	(1) Right to representation by:					
	8. Statement of right to: a. Refuse to consent to:					
	(1) However, LEA can request hearing to try to obtain approval					
	b. Inspect and copy relevant student records					
	c. ~~Appeal~~ Review				A,C	
	d. Due process hearing, if parent objects to action					
	9. Description of: a. Procedures for objecting to action or appealing decision					
	b. Procedural rights at due process hearing:					
	c. Procedures for appealing decision resulting from due process hearing					
	10. List of community agencies offering legal counsel for indigents					
	11. Declaration that child's educational status will not be changed without consent of parent, or until due process procedures have been exhausted a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by:					
	12. Other: (a) Relevant rules, regulations, and local policies. (b) Ongoing placement (See above under "OF") (c) Major changes in placement. (See above under "OF")				A,C B C	
CONSULTATION with parent or guardian	I. RE: Child's problems.[1] WHEN: Prior to implementation of evaluation. II. RE: Placement decision.[2] III. RE: Changes in or termination of placement.[2]	H.8.6 I.9.4 I.9.10, 11.		X X X		
CONSENT by parent or guardian	TO: Continuation of present placement of child pending parents' appeal of school's decision regarding placement.[1]	I.9.7, J.10.15			X	
OTHER AREAS of parental involvement or rights						

Footnotes

[1] Parents are not provided specific notice of this right.

[2] Conference may be used (as alternative to letter) to notify parents of decisions relative to placement. See Notice provisions above, under "OF".

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART II: APPEAL.

STATE: Delaware — ADMINISTRATIVE PROVISION: Rules and Regulations to Implement the Subsection of the Delaware State Code for Exceptional Children. (June, 1974)

STAGES OF APPEAL		CITATION §
INITIAL APPEAL	REGULATORY CATEGORY: Review of (1) Recommended placement, (2) Declaration of ineligibility for special education services, (3) Identification of needs outside educational system, or (4) Parents' belief that child requires special education. HOW INITIATED: Written request to superintendent. WHEN: If placement is proposed, prior to placement, or within 10 days after placement, subject to extension, for good cause by mutual agreement up to 30 calendar days. PROCEDURE: See below.	J.10.2-12
SUBSEQUENT APPEAL JUDICIAL REVIEW	OF: Decision following review conference. TO: Superintendent of Public Instruction. Super. may dismiss any review he deems lacking in substance. HOW INITIATED: Written request to district school Super. w/in 5 days of receipt of local review decision, subject to 30 day extension by mutual consent for good cause. WHEN: W/in 10 calendar days of receipt of transcript which shall be mailed to Super. (and to parents) w/in 7 calendar days of request for review. PROCEDURE: (1) Examination of placement based on study of transcript of local review conference by reviewing officer designated by Super. of Public Instruction (shall be an employee of Department of Public Instruction). (2) Reviewing officer may request (a) further information by oral testimony or in writing (b) technical assistance. DECISION: Report of review must be submitted to Super. of Public Instruction, who shall decide the matter within 30 calendar days of receipt of transcript.	J.10.12-17

DUE PROCESS PROVISIONS		INITIAL APPEAL NOTICE	INITIAL APPEAL PROCEDURE	SUBSEQUENT APPEAL NOTICE	SUBSEQUENT APPEAL PROCEDURE
	Right to:				
PRE-HEARING	PRE-HEARING CONFERENCE with school officials and chosen professional representative of parents (including legal counsel).		X		
	NOTICE OF: (See also CONDUCT OF HEARING)				
	1. Specification of tests, instruments or reports on which proposed placement is based				
	2. Review and appeal procedures:				
	3. Names of:				
	4. Statement of right to:				
	a. Independent evaluation				
	b. Inspect and copy relevant records				
	c. Compel attendance at hearing of witnesses				
	5. Exact time and place of hearing				
	OTHER: Right to information on which placement decision was made.		X		
HEARING	BEFORE: Review conference between: Parents, their representatives, special education administrators, principal authors of placement decision, and appropriate local district personnel. Chairman shall be superintendent or designated administrator other than special education personnel.		X		
	WHEN: Within 5 calendar days of notice.		X		
	CONDUCT OF HEARING:				
	1. Fair and Impartial				
	2. Closed, unless open hearing is requested by:				
	3. Right of				
	a. Compel attendance of witnesses				
	b. Representation by:				
	c. Present evidence and testimony - upon request by reviewing officer.		X		X
	d. Confront and ~~cross-examine adverse witnesses~~ question school personnel about information presented.		X		
	e. Interpreters for deaf and/or fluent in primary language of home				
	f. Attendance by minor child at option of parent				
	4. Burden of proof on:				
	5. Record of ~~hearing~~ Conference.		X		
	SCOPE OF REVIEW: To establish or refute that (1) Child has special needs, (2) Evaluation procedures used were appropriate, (3) Diagnostic profile on which placement decision was based is substantially verified, (4) Proposed placement is directly related to child's educational needs.		X		
	DECISION FOLLOWING HEARING:		X		
	1. Scope: Affirm or deny placement decision, or recommend alternative procedure.				
	a. Includes: Reasons for decision		X		
	b. Based solely on evidence and testimony presented at hearing				
	2. Form: Writing, sent by certified mail within 4 calendar days of conference.	X			
	3. Statement of rights sent with decision: Right to appeal.	X			
	4. Other:				
OTHER DUE PROCESS PROVISIONS	Request for review by Superintendent of Public Instruction shall stay placement of child until review has been determined, unless (1) parents and school mutually agree to continue recommended placement already effected, or (2) the recommended placement is in the interest of the health or safety of others.				X

Footnotes

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART I: REFERRAL, EVALUATION AND PLACEMENT.

STATE: District of Columbia / ADMINISTRATIVE PROVISION: (1) Superintendent's Circular #11 (October 2, 1975) (2) Public Schools of D.C. "Implementation of the Order and Decree in Mills v. Board of Education of D.C." (June, 1975)

DUE PROCESS PROVISIONS	CITATION	REFERRAL	EVALUATION	PLACEMENT	OTHER
NOTICE to parent or guardian — OF: Placement: proposed placement, transfer from or to placements or denial of placement.	"Implementation" 1,2,3.A. B.1.-6.; Cir.# 11-I.B.2.			X	
WHEN: Prior to proposed action					
FORM: Registered or certified mail					
ITEMS ON NOTICE:					
1. Request parent:					
2. Description of: a. Proposed or requested action, or decision:				X	
b. Reasons for action or decision and basis for proposed action.				X	
3. Names of persons responsible for:					
4. Specification of tests, instruments or reports: on which proposed action is based,				X	
5. When action involves placement or denial of placement: a. Description of alternative educational placements				X	
b. Reasons why such alternative placements are not appropriate for child					
6. Statement that parents will be informed of results of:					
7. Statement of opportunity/right to: a. Obtain independent evaluation				X	
(1) At expense of: no charge,				X	
(2) Names, addresses and telephone numbers of public agencies offering free evaluation				X	
b. Meet and consult with school personnel concerning:					
c. Participate in committee meetings regarding:					
(1) Right to representation by:					
8. Statement of right to: a. Refuse to consent to:					
(1) However, LEA can request hearing to try to obtain approval					
b. Inspect and copy relevant student records prior to hearing,				X	
c. Appeal					
d. Due process hearing, if parent objects to action				X	
9. Description of: a. Procedures for objecting to action or appealing decision					
b. Procedural rights at due process hearing: (1) Representation by counsel; (2) Present evidence including expert testimony; (3) Confront and cross-examine witnesses.				X	
c. Procedures for appealing decision resulting from due process hearing					
10. List of community agencies offering legal counsel for indigents					
11. Declaration that child's educational status will not be changed without consent of parent, or until due process procedures have been exhausted					
a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by:					
12. Other:					
CONSULTATION with parent or guardian — PE: Recommended placement.[1]	Cir.#11-I.C.1.			X	
CONSENT by parent or guardian — I. TO: Evaluate child.[1]	Cir.#11-I.A.4.a.		X		
II. Placement of child.[2] FORM: Written	Cir#11-I.C.3.			X	
OTHER AREAS of parental involvement or rights					

Footnotes
[1] Parents are not provided with notice of this right.
[2] See above under NOTICE.

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART II: APPEAL.

STATE: District of Columbia ADMINISTRATIVE PROVISION: "Implementation of the Order and Decree in Mills v. Board of Education of D.C." (June 1975)

STAGES OF APPEAL		CITATION
INITIAL APPEAL	ADMINISTRATIVE CATEGORY: Contest of proposed placement, denial of placement, or transfer. PROCEDURE: Hearing. See below.	#3B,7-18
SUBSEQUENT APPEAL		
JUDICIAL REVIEW		

DUE PROCESS PROVISIONS		INITIAL APPEAL NOTICE	INITIAL APPEAL PROCEDURE	SUBSEQUENT APPEAL NOTICE	SUBSEQUENT APPEAL PROCEDURE
PRE-HEARING	PRE-HEARING CONFERENCE with school officials				
	NOTICE OF: (See also CONDUCT OF HEARING)				
	1. Specification of tests, instruments or reports on which proposed placement is based				
	2. Review and appeal procedures:				
	3. Names of:				
	4. Statement of right to:				
	a. Independent evaluation				
	b. Inspect and copy relevant records prior to hearing.		X		
	c. Compel attendance at hearing of witnesses		X		
	5. Exact time and place of hearing				
	OTHER:				
HEARING	BEFORE: Hearing officer		X		
	WHEN: Between 20 and 40 days after receipt of request		X		
	CONDUCT OF HEARING:				
	1. Fair and impartial				
	2. Closed, unless open hearing is requested by : parent or guardian.		X		
	3. Right of				
	a. Compel attendance of witnesses				
	b. Representation by: Including legal counsel,[1]	X	X		
	c. Present evidence and testimony including expert testimony.		X		
	d. Confront and cross-examine adverse witnesses		X		
	e. Interpreters for deaf and/or fluent in primary language of home				
	f. Attendance by mi r child at option of parent				
	4. Burden of proof on: School system as to all facts and as to appropriateness of placement, denial of placement or transfer.		X		
	5. Record of hearing: Transcribed; must be made available upon request.		X		
	SCOPE OF REVIEW:				
	DECISION FOLLOWING HEARING:				
	1. Scope:				
	a. Includes: Findings of fact and conclusions of law.		X		
	b. Based solely on evidence and testimony presented at hearing		X		
	2. Form: Written. Sent by registered mail to parent and counsel within 10 days after hearing.	X			
	3. Statement of rights sent with decision:				
	4. Other: Filed with Board of Education and Department of Human Resources		X		
OTHER DUE PROCESS PROVISIONS	Pending determination of hearing officer, school shall not alter placement, denial of placement, transfer from or to a program of special education, if child's parent or guardian objects in writing postmarked within 5 days of proposed placement, transfer or denial.		X		

Footnotes

1 If child is unable, through financial inability to retain counsel, parents or guardians should be advised of availability of voluntary legal assistance including neighborhood legal services organizations, the Legal Aid society, the Young Lawyers section of D.C., Bar Association or other.

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART I: REFERRAL, EVALUATION AND PLACEMENT.

STATE: Florida	ADMINISTRATIVE PROVISION: Regulations Pertaining to Exceptional Students (Oct. 1974); Amendment to State Plan under P.L. 93-380 (FY 1975) Part II § II Procedural Safeguards	CITATION	REFERRAL	EVALUATION	PLACEMENT	OTHER
DUE PROCESS PROVISIONS						
NOTICE to parent or guardian	OF: Proposed assignment or placement, or denial of same. FORM: Written. NOTE: The Regulations provide that each school board must develop policies for notice and other procedural rights.	Regulations §6A-6.331 (4)(6)a.			X	
	ITEMS ON NOTICE: 1. Request parent:					
	2. Description of: a. Proposed or requested action, or decision: Proposed assignment or placement, or denial of same.				X	
	b. Reasons for action or decision: Proposed assignment or placement, or denial.				X	
	3. Names of persons responsible for:					
	4. Specification of tests, instruments or reports:					
	5. When action involves placement or denial of placement: a. Description of alternative educational placements					
	b. Reasons why such alternative placements are not appropriate for child					
	6. Statement that parents will be informed of results of:					
	7. Statement of opportunity/right to: a. Obtain independent evaluation					
	(1) At expense of:					
	(2) Names, addresses and telephone numbers of public agencies offering free evaluation					
	b. Meet and consult with school personnel concerning:					
	c. Participate in committee meetings regarding:					
	(1) Right to representation by:					
	8. Statement of right to: a. Refuse to consent to:					
	(1) However, LEA can request hearing to try to obtain approval					
	b. Inspect and copy relevant student records					
	c. Appeal					
	d. Due process hearing, if parent objects to action					
	9. Description of: a. Procedures for objecting to action or appealing decision: requesting review conference.				X	
	b. Procedural rights at due process hearing:					
	c. Procedures for appealing decision resulting from due process hearing					
	10. List of community agencies offering legal counsel for indigents					
	11. Declaration that child's educational status will not be changed without consent of parent, or until due process procedures have been exhausted					
	a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by:					
	12. Other:					
CONSULTATION with parent or guardian						
CONSENT by parent or guardian						
OTHER AREAS of parental involvement or rights	Right to: review all records and independent evaluation is suggested by guidelines set forth in State Plan (SII Procedural Safeguards)[1].					X

footnotes [1] Parents are not provided notice of this right

STATE: Florida — ADMINISTRATIVE PROVISION: Regulations Pertaining to Exceptional Students (Oct. 1974); Amendment to State Plan under P.L. 93-380 (FY 1975) Part II § II Procedural Safeguards

STAGES OF APPEAL		CITATION
INITIAL APPEAL	REGULATORY CATEGORY: Review conference. HOW INITIATED: Request by parent or guardian according to school board policy. NOTE: The Regulations provide that each local school district shall adopt policies providing for review. Suggested guidelines for local schools are provided by the State Plan. These guidelines are also noted below.	Regulations § 6A-6.331(4); State Plan-§II Pro.Safe.
SUBSEQUENT APPEAL	OF: Decision of local school personnel. TO: School board. PROCEDURE: Review of transcript of review conference by impartial reviewing officer designated by chairman of school board. Officer may request further information, by oral testimony or in writing, and technical assistance. Review shall be within 10 calendar days of receipt of transcript, and report of review within 30 days of receipt of transcript. Board may dismiss any review deemed lacking in substance.	Regulations § 6A-6.331(4)(d) - State Plan §II
JUDICIAL REVIEW		

DUE PROCESS PROVISIONS		INITIAL APPEAL		SUBSEQUENT APPEAL	
		NOTICE	PROCEDURE	NOTICE	PROCEDURE
PRE-HEARING	PRE-HEARING CONFERENCE with school officials				
	NOTICE OF: (See also CONDUCT OF HEARING)				
	1. Specification of tests, instruments or reports on which proposed placement is based				
	2. Review and appeal procedures:				
	3. Names of:				
	4. Statement of right to:				
	a. Independent evaluation	X	X		
	b. Inspect and copy relevant records		X		
	c. Compel attendance at hearing of witnesses				
	5. Exact time and place of hearing: At least 5 calendar days notice.	X			
	OTHER:				
HEARING	BEFORE: Parents and representatives, special education administrators, authors of placement decision and appropriate school personnel. Chairman of conference shall be designated.[1]		X		
	WHEN: Within 15 days of request.		X		
	CONDUCT OF HEARING:				
	1. Fair and impartial				
	2. Closed, unless open hearing is requested by:				
	3. Right of				
	a. Compel attendance of witnesses				
	b. Representation by: Counsel.		X		
	c. Present evidence and testimony - factual information.		X		
	d. Confront and cross-examine adverse witnesses - question re reasons for action.		X		
	e. Interpreters for deaf and/or fluent in primary language of home				
	f. Attendance by minor child at option of parent				
	4. Burden of proof on:				
	5. Record of hearing: Written transcript must be signed by school and parents and must be made by court reporter paid for by school.		X		
	SCOPE OF REVIEW: Rules of evidence do not pertain. Review shall seek to ascertain a.child has needs requiring special ed.,b.evaluation procedures were appropriate & c.diagnostic profile on which placement decision was based is substantially verified.		X		
	DECISION FOLLOWING HEARING:				
	1. Scope:				
	a. Includes: Reasons for decision.		X		
	b. Based solely on evidence and testimony presented at hearing				
	2. Form: To be provided parent within reasonable period of time following review conference -e.g. 4 calendar days after conference.	X			
	3. Statement of rights sent with decision: Appeal to District School Board within 5 days of receipt of decision (may be extended for cause up to 30 days).	X			
	4. Other:				
OTHER DUE PROCESS PROVISIONS					

Footnotes [1] Chairman may be superintendent of child's home district, district administrator, or a person not an officer, employee or agent of LEA.

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART I: REFERRAL, EVALUATION AND PLACEMENT.

STATE: Georgia	ADMINISTRATIVE PROVISION: Special Education Regulations and Procedures (July 1975)	CITATION §	REFERRAL	EVALUATION	PLACEMENT	OTHER
DUE PROCESS PROVISIONS						
NOTICE to parent or guardian	OF: I. Referral.[1] WHEN: Prior to notice of proposed evaluation,	II.B.1.c	X			
	II. Evaluation: Statement that referral has been made and evaluation process is proposed. FORM: Written.[1] WHEN: After referral.	II.B.1.c		X		
	III. Placement; FORM: Written.[1] WHEN: 5-15 school days after child has been recommended for placement.	II.B.2.b			X	
	ITEMS ON NOTICE:					
	1. Request parent:					
	2. Description of: a. Proposed or requested action, or decision: Referral has been made: evaluation process- when and where; proposed placement.		X	X	X	
	b. Reasons for action or decision: Prposed placement.				X	
	3. Names of persons responsible for: Making referral. (Position of persons, also).			X		
	4. Specification of tests, instruments or reports: Which are basis of proposed placement				X	
	5. When action involves placement or denial of placement: a. Description of alternative educational placements					
	b. Reasons why such alternative placements are not appropriate for child					
	6. Statement that parents will be informed of results of: Evaluation within 30 days after completion of evaluation.			X		
	7. Statement of opportunity/right to: a. Obtain independent evaluation in order to challenge school evaluation.			X	X	
	(1) At expense of:					
	(2) Names, addresses and telephone numbers of public agencies offering free evaluation					
	b. Meet and consult with school personnel concerning: Referral and evaluation; proposed placement.			X	X	
	c. Participate in committee meetings regarding: Educational placement.			X		
	(1) Right to representation by: Third party.			X		
	8. Statement of right to: a. Refuse to consent to: Evaluation: placement recommendation.			x	X	
	(1) However, LEA can request hearing to try to obtain approval					
	b. Inspect and copy relevant student records				X	
	c. Appeal by either party within 15 days of parent's signed response or lack of response to Parental Consent for Evaluation/ Placement Form.			X	X	
	d. Due process Hearing, if parent objects to action			X		
	9. Description of: a. Procedures for objecting to action or appealing decision					
	b. Procedural rights at due process hearing:					
	c. Procedures for appealing decision resulting from due process hearing					
	10. List of community agencies offering legal counsel for indigents					
	11. Declaration that child's educational status will not be changed without consent of parent, or until due process procedures have been exhausted			X	X	
	a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by:					
	12. Other: (a) Statement that, in the event no response to Parental Consent for Evaluation Form is received within 15 days, a school official will contact the home to determine the reason for lack of response or the necessity of assigning a surrogate parent. (b) Burden of proof re placement lies with school system.			a	a,b	
CIRCULATION with parent or guardian	RE: Determination of educational placement at placement committee meeting[2].	II.B.1.c.(5) II.A.4.				
	RIGHT TO: Be present and represented or accompanied by third party at meeting.					
CONSENT by parent or guardian	I. TO: Evaluation: A. Any evaluation[2,3] other than routine (e.g. mass vision, dental work, etc.) WHEN: Prior to evaluation. FORM: Written, on file. B. Testing[2,3]. FORM: In accordance with due process procedures.	II.B.1.c II.C.2.a		X B		
[MAY NEED] of parental involvement or rights	II. TO: Placement: A. Placement[2,3]. WHEN: Prior to placement. FORM: Signed, on file. B. Change in program or placement[2,3]. C. Change in child's educational status pending initial placement decision[2,3].	II.B.2a, b.			A B C	

Footnotes [1] Each school system shall insure that all communications made to parents be in both English and in primary language of home. [2] See above under NOTICE. [3] IIA.1. provides that all possible means of communication may be utilized in securing consent, e.g. oral or regular mail, certified mail used only as a last resort.

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART II: APPEAL.

STATE : Georgia ADMINISTRATIVE PROVISION: Special Education Regulations and Procedures (July 1975)

STAGES OF APPEAL		CITATION
INITIAL APPEAL	REGULATORY CATEGORY: Appeal of evaluation or placement decision of local Special Education Placement Committee. HOW INITIATED: Either party (parents or school) may file oral or written appeal within 15 days of parents' signed negative response, or lack of response, to Parental Consent for Placement Form. PROCEDURE: Hearing -see below.	II.B.2(3) II.B.3.a.
SUBSEQUENT APPEAL	OF: Decision of local review board. TO: State Board of Education. HOW INITIATED: Request by either party within 10 days of local board decision. PROCEDURE: Impartial judgment of decision of local review board by State Board of Education or by review board designated by it.	II.B.3.b.
JUDICIAL REVIEW		

DUE PROCESS PROVISIONS		INITIAL APPEAL NOTICE	INITIAL APPEAL PROCEDURE	SUBSEQUENT APPEAL NOTICE	SUBSEQUENT APPEAL PROCEDURE
PRE-HEARING	PRE-HEARING CONFERENCE with school officials				
	NOTICE OF: (See also CONDUCT OF HEARING) 1. Specification of tests, instruments or reports on which proposed placement is based				
	2. Review and appeal procedures:				
	3. Names of:				
	4. Statement of right to: a. Independent evaluation	X			
	b. Inspect and copy relevant records upon which proposed placement was based;	X	X		
	c. Compel attendance at hearing of witnesses				
	5. Exact time and place of hearing	X			
	OTHER:				
HEARING	BEFORE: Local Hearing Review Board of 3 members; either the local school board or a Special Review Board designated by it. (Continued next page)		X		
	WHEN: Within 20 school days of appeal,	X			
	CONDUCT OF HEARING: 1. Fair and impartial				
	2. Closed, unless open hearing is requested by : Parent, in writing[1].	X	X		
	3. Right of a. Compel attendance of witnesses				
	b. Representation by: Counsel or other individuals	X	X		
	c. Present evidence and testimony	X	X		
	d. Confront and cross-examine adverse witnesses	X	X		
	e. Interpreters for deaf and/or fluent in primary language of home				
	f. Attendance by minor child at option of parent				
	4. Burden of proof on: School, as to appropriateness of proposed placement.	X	X		
	5. Record of hearing:	X	X		
	SCOPE OF REVIEW: Hearing Review Board has authority to confirm or reject decisions for placement of child.	X	X		
	DECISION FOLLOWING HEARING: 1. Scope:				
	a. Includes:				
	b. Based solely on evidence and testimony presented at hearing				
	2. Form:				
	3. Statement of rights sent with decision:				
	4. Other: Binding unless appealed. Pre-hearing notice of this fact. Within 15 days of Board's decision.	X	X		
OTHER DUE PROCESS PROVISIONS					

Footnotes [1] If open hearing is requested, school system's attorney, appropriate staff members of local board of education and other persons requested by either school system or parents and approved by review board may be present.

DUE PROCESS PROVISIONS

HEARING

BEFORE (Continued): Hearing Review Board: If a Special Review Board is designated, members shall be drawn from a minimum list of 10 eligible personnel maintained by local school system or by district agency designated by local school system. The list itself should be on file in the local school system. For any given hearing, the review board shall consist of 3 members. No member of the review board may participate in 3 consecutive hearings. To qualify as a member of the review board, person must be unbiased and not reflect cultural, ethnic or racial background of child. Suggested agencies from which list of review board members could be compiled are Family and Children Services, Mental Health, Vocational Rehabilitation, College/University, Advocacy Group, Personnel from other local school systems outside the immediate geographic region or district.

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART I: REFERRAL, EVALUATION AND PLACEMENT.

STATE: Hawaii	ADMINISTRATIVE PROVISION: Rule 49, Relating to Changing the Educational Status of Exceptional Students (Nov.1975)	CITATION	REFERRAL	EVALUATION	PLACEMENT	OTHER
DUE PROCESS PROVISIONS		§				
NOTICE to parent or guardian	I. Of: Educational evaluation. WHEN: Prior to evaluation. II. Of: Proposed change in educational status. Placement in education program: Placement from special education program to regular program; transfer from special education program to another special education program; or transfer to a special education program outside district of residence. FORM: Writing.	49.4.a. 49.4.d.		X	X	
	ITEMS ON NOTICE: 1. Request parent:					
	2. Description of: a. Proposed or requested action, or decision: Proposed evaluation; proposed change in educational status.			X	X	
	b. Reasons for action or decision: Proposed change in educational status.				X	
	3. Names of persons responsible for:					
	4. Specification of tests, instruments or reports: evaluation data on which proposed placement is based.				X	
	5. When action involves placement or denial of placement: a. Description of alternative educational placements				X	
	b. Reasons why such alternative placements are not appropriate for child					
	6. Statement that parents will be informed of results of:					
	7. Statement of opportunity/right to: a. Obtain independent evaluation					
	(1) At expense of:					
	(2) Names, addresses and telephone numbers of public agencies offering free evaluation					
	b. Meet and consult with school personnel concerning:					
	c. Participate in committee meetings regarding:					
	(1) Right to representation by:					
	8. Statement of right to: a. Refuse to consent to:					
	(1) However, LEA can request hearing to try to obtain approval					
	b. Inspect and copy relevant student records					
	c. Appeal					
	d. Due process hearing, if parent objects to action - proposed change in educational status.				X	
	9. Description of: a Procedures for objecting to action or appealing decision: Written or oral.				X	
	b. Procedural rights at due process hearing: Present evidence, call and cross-examine witnesses; right to choice of representative.				X	
	c. Procedures for appealing decision resulting from due process hearing					
	10. List of community agencies offering legal counsel for indigents					
	11. Declaration that child's educational status will not be changed without consent of parent, or until due process procedures have been exhausted a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by:					
	12. Other:					
CONSULTATION with parent or guardian	RE: Discussion of recommended change in placement. Advise parents of alternative educational opportunities.[1]	§49.4.c.			X	
CONSENT by parent or guardian	TO: Placement.[2] FORM: Written.				X	
OTHER AREAS of parental involvement or rights						
Footnotes	1 Notice of this conference is provided under Department Procedures for Implementing Rule 49(Feb.1974). 2 See above under NOTICE.					

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART II: APPEAL.

STATE: Hawaii — ADMINISTRATIVE PROVISION: Rule 49, Relating to Changing the Educational Status of Exceptional Students (Nov. 1973)

STAGES OF APPEAL		CITATION §
INITIAL APPEAL	REGULATORY CATEGORY: Appeal of: 1. School's decision not to request educational evaluation. 2. School's decision not to recommend change in educational status. 3. School's recommendation for change in educational status. PROCEDURE: Hearing.	49.4.a.
SUBSEQUENT APPEAL	OF: Decision of District superintendent. TO: Superintendent of Education. WHEN: Within 10 school days of mailing of decision. PROCEDURE: Decision of District Superintendent shall be mailed to parents, including determination of fact or law. Parent has right to file exceptions to decision and to present argument to Superintendent of Education at specified date, time and place.	49.5
JUDICIAL REVIEW		

DUE PROCESS PROVISIONS		INITIAL APPEAL NOTICE	INITIAL APPEAL PROCEDURE	SUBSEQUENT APPEAL NOTICE	SUBSEQUENT APPEAL PROCEDURE
PRE-HEARING	PRE-HEARING CONFERENCE with school officials				
	NOTICE OF: (See also CONDUCT OF HEARING) 1. Specification of tests, instruments or reports on which proposed placement is based				
	2. Review and appeal procedures:				
	3. Names of:				
	4. Statement of right to: a. Independent evaluation				
	b. Inspect and copy relevant records				
	c. Compel attendance at hearing of witnesses				
	5. Exact time and place of hearing	X			
	OTHER:				
HEARING	BEFORE: District Superintendent or designee - disinterested person who may be officer or employee of Department.		X		
	WHEN: Scheduled within 10 school days after receipt of request.		X		
	CONDUCT OF HEARING: 1. Fair and Impartial				
	2. Closed, unless open hearing is requested by : student or parent.		X		
	3. Right of a. Compel attendance of witnesses				
	b. Representation by: person chosen by student or parent.		X		
	c. Present evidence and testimony		X		
	d. Confront and cross-examine adverse witnesses		X		
	e. Interpreters for deaf and/or fluent in primary language of home				
	f. Attendance by minor child ~~at option of parent~~		X		
	4. Burden of proof on:				
	5. Record of hearing: Made by parties if they choose.		X		
	SCOPE OF REVIEW: Formal rules of evidence need not be followed.		X		
	DECISION FOLLOWING HEARING: If other than Superintendent conducted hearing, 1. Scope: recommended decision shall be reviewed by Superintendent who may accept, reject or modify decision.		X		
	a. Includes: Action to be taken and reasons for it.		X		
	b. Based solely on evidence and testimony presented at hearing unless agreed otherwise by both student and parents.		X		
	2. Form: Certified mail or personally delivered.	X			
	3. Statement of rights sent with decision:				
	4. Other: Rendered no later than 5 days after close of hearing.		X		
OTHER DUE PROCESS PROVISIONS	Change in educational status shall not be implemented pending appeal to Superintendent of Education unless District Superintendent finds delay would be detrimental to student or others.				X

Footnotes

STATE: Idaho — ADMINISTRATIVE PROVISION: Due Process Provisions for Idaho's Exceptional Students (December 1975)

DUE PROCESS PROVISIONS	CITATION Part	REFERRAL	EVALUATION	PLACEMENT	OTHER
NOTICE to parent or guardian					
I. OF: Evaluation.					
A. Request permission to test. FORM: Written; primary language of home.	II		X		
B. School's going forward with comprehensive assessment where parent fails to respond to school's repeated attempts(by mail, phone and/or home visit) to obtain permission to test.			X		
II. OF: Proposed placement into or out of regular and special education classes, or major changes within special education program. WHEN:Prior to proposed action. FORM: Orally and in writing in primary language of home.	II			X	
III. Annual review conference. FORM:Written. WHEN: At least 1 week before conference.	II				X
ITEMS ON NOTICE:					
1. Request parent: 's permission to test			A		
2. Description of:					
a. ~~Proposed or requested action, or~~ Decision: To go forward with comprehensive assessment where parent did not respond to request for permission to test;placement.			B	X	
b. Reasons for action or decision: Proposed testing; proposed placement or change in placement; annual review conference.			A	X	X
3. Names of persons responsible for:					
4. Specification of tests, instruments or reports: Which are basis for proposed placement or change in placement; used to assess progress of child during past year.				X	X
5. When action involves placement or denial of placement:					
a. Description of alternative educational placements				X	
b. Reasons why such alternative placements are not appropriate for child				X	
6. Statement that parents will be informed of results of: Testing and proposed placement Invite parents to review results.			A,B		
7. Statement of opportunity/right to:					
a. Obtain Independent evaluation					
(1) At expense of:					
(2) Names, addresses and telephone numbers of public agencies offering free evaluation					
b. Meet and consult with school personnel concerning: Progress in special education placemen					X
c. Participate in committee meetings regarding: Annual review conference.					X
(1) Right to representation by:					
8. Statement of right to:					
a. Refuse to consent to: Testing.			A		
(1) However, LEA can request hearing to try to obtain approval					
b. Inspect and copy relevant student records prior to testing.			A,B		
c. Appeal (Informal)					
d. ~~Due process~~ hearing, ~~if parent objects to action~~ re school's decision to test or proposed placement, upon request by parent.			B	X	
9. Description of:					
a. Procedures for objecting to action or appealing decision					
b. Procedural rights at due process hearing;					
c. Procedures for appealing decision resulting from due process hearing					
10. List of community agencies offering legal counsel for indigents					
11. Declaration that child's educational status will not be changed without consent of parent, or until due process procedures have been exhausted					
a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by:					
12. Other: Annual review conference: a.reason for it;b. tests or evaluation procedures which will be used to assess progress; c. procedures for parental participation. (See also above under #2 b.;4; 7.b.,c.)					X
CONSULTATION with parent or guardian					
I. RE: Refusal of parents to give permission for testing. School should try to meet with parents. If agreement can't be reached, school may not initiate evaluation.[1]	Part II		X		
II. RE: Resolution of parents' concerns re placement.[1]	Part II			X	X
III. RE: Child's progress. WHEN: Annual review conference.					
CONSENT by parent or guardian					
I. TO: Testing for special education. WHEN: Prior to and as condition of testing. FORM: Written, on file.	Part II		X		
II. TO: Program: placement into or out of regular and special education classes, on major changes within special education program. WHEN: Prior to and as condition of any such action.	Part II			X	
OTHER AREAS of parental involvement or rights					
I. Opportunity for independent evaluation at parent's expense. School should provide names, addresses and telephone numbers of public agencies offering free or minimal-cost evaluations.[2] (Continued on next page)					X

Footnotes

[1] Parents are not provided notice of this right.

[2] ~~This provision is labeled "Burden of Proof".~~

OTHER AREAS of parental involvement or rights: (Continued)

II. Final responsibility of finding appropriate educational opportunity lies with parents. School may not proceed with evaluation or placement if parent refuses to give written consent, and school may not request informal hearing in an attempt to prevail over parent decision refusing such consent.

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART II: APPEAL.

STATE: Idaho — ADMINISTRATIVE PROVISION: Due Process Provisions for Idaho's Exceptional Students (December 1975)

STAGES OF APPEAL		CITATION Part
INITIAL APPEAL	REGULATORY CATEGORY: Objection to proposed changes in educational program - placement into or out of regular or special education classes, or major changes within special education program. PROCEDURE: Informal hearing. (See below)	II
SUBSEQUENT APPEAL	WHEN: Following informal hearing before mediator. TO: Alternatives: (1) State Superintendent of Public Instruction; or (2) State Board of Education and/or (3) Court proceedings. PROCEDURE: (1),(2) - informal hearing. (Details unspecified)	II
JUDICIAL REVIEW	OF: Recommendation of mediator. TO: Court	II

DUE PROCESS PROVISIONS		INITIAL APPEAL NOTICE	INITIAL APPEAL PROCEDURE	SUBSEQUENT APPEAL NOTICE	SUBSEQUENT APPEAL PROCEDURE
PRE-HEARING	PRE-HEARING CONFERENCE with school officials: To review situation and possibly avoid hearing. WHEN: Within 5 days of parent's request for hearing.		X		
	NOTICE OF: (See also CONDUCT OF HEARING)				
	1. Specification of tests, instruments or reports on which proposed placement is based				
	2. Review and appeal procedures:				
	3. Names of:				
	4. Statement of right to:				
	a. Independent evaluation at parent's expense.	X			
	b. Inspect and copy relevant records	X			
	c. Compel attendance at hearing of witnesses				
	5. Exact time and place of hearing	X			
	OTHER:				
HEARING	BEFORE: Impartial mediator assigned by State Department of Education. Unbiased, disinterested, and independent of both local school district and State Department of Education.		X		
	WHEN: Within 40 days of request for hearing.		X		
	CONDUCT OF HEARING:				
	1. Fair and impartial		X		
	2. ~~Closed, unless~~ Open hearing ~~is requested by~~ unless parents request closed.		X		
	3. Right of: Request				
	a. ~~Compel~~ attendance of witnesses		X		
	b. Representation by: including legal counsel or other professional persons.		X		
	c. Present evidence and ~~testimony~~ opinions.		X		
	d. Confront and cross-examine adverse witnesses		X		
	e. Interpreters for deaf and/or fluent in primary language of home		X		
	f. Attendance by minor child at option of parent. Mediator may exclude if attendance harmful to child.		X		
	4. Burden of proof on:				
	5. Record of hearing: Right to access, upon formal request and at minimum expense, of verbatim record.		X		
	SCOPE OF REVIEW:				
	DECISION FOLLOWING HEARING:				
	1. Scope: Weight - non-binding on either party.		X		
	a. Includes: Facts, conclusions, and reasons for recommendations		X		
	b. Based solely on ~~evidence and testimony~~ presented at hearing.		X		
	2. Form: Written recommendations sent upon request to parties and to State Department of Education	X			
	3. Statement of rights sent with decision: Recommendations are used only to assist school district and parents to resolve differences. Non-binding.	X			
	4. Other:				
OTHER DUE PROCESS PROVISIONS	Summary of hearing should be made, including any materials or statements specifically requested to appear in the record by any of the parties.		X		

Footnotes

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART I: REFERRAL, EVALUATION AND PLACEMENT.

STATE: Illinois	ADMINISTRATIVE PROVISION: Rules and Regulations to Govern the Administration and Operation of Special Education (Oct. 1, 1974)	CITATION §	REFERRAL	EVALUATION	PLACEMENT	OTHER
DUE PROCESS PROVISIONS						
NOTICE to parent or guardian	I. OF: Evaluation: Need for. WHEN: Prior to evaluation.	9.06		X		
	II. OF: Placement:					
	A. Determination of education plan and placement in special education program. WHEN: At least 10 calendar days prior to proposed placement. FORM: Letter or conference.	10.04			X	
	B. Ongoing placement. WHEN: At least 10 calendar days prior to school year.	10.17			X	
	C. Major changes in placement. WHEN: At least 10 calendar days prior to change.	10.18			X	
	III. Termination of special education program or service. WHEN: Prior to termination.	10.19				X
	ITEMS ON NOTICE:					
	1. Request parent:					
	2. Description of:					
	a. Proposed or requested action, or decision: Need for evaluation; placement decision and plans for implementing it; ongoing placement			X	AB,C	
	b. Reasons for action or decision: Placement decision.				A,C	
	3. Names of persons responsible for:					
	4. Specification of tests, instruments or reports: On which placement decision was based.				A,C	
	5. When action involves placement or denial of placement:					
	a. Description of alternative educational placements				A,C	
	b. Reasons why such alternative placements are not appropriate for child					
	6. Statement that parents will be informed of results of:					
	7. Statement of opportunity/right to:					
	a. Obtain independent evaluation					
	(1) At expense of:					
	(2) Names, addresses and telephone numbers of public agencies offering free evaluation					
	b. Meet and consult with school personnel concerning: Child's problems			X		
	c. Participate in committee meetings regarding:					
	(1) Right to representation by:					
	8. Statement of right to:					
	a. Refuse to consent to:					
	(1) However, LEA can request hearing to try to obtain approval					
	b. Inspect and copy relevant student records					
	c. ~~Appeal~~ Review (1) initial placement decision; (2) proposed change in placement.				A,C	
	d. Due process hearing, if parent objects to action					
	9. Description of:					
	a. Procedures for objecting to action or appealing decision					
	b. Procedural rights at due process hearing:					
	c. Procedures for appealing decision resulting from due process hearing					*
	10. List of community agencies offering legal counsel for indigents					
	11. Declaration that child's educational status will not be changed without consent of parent, or until due process procedures have been exhausted					
	a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by:					
	12. Other: a. Rule or regulation and any local policies upon which placement decision is based.				A,C	
	b. Termination of special education program or service.					X
CONSULTATION with parent or guardian	I. RE: Child's problems.[1] WHEN: Prior to implementing evaluation.	§9.06				X
	II. RE: Explaining evaluation and educational plan.[2]	10.03		X		
	III. RE: Notice of education plan.[3]	10.04			X	
CONSENT by parent or guardian	TO: I. Implementation of proposed placement prior to date projected in education plan or	10.06			X	
	II. Placement proposed in plan and already effected prior to projected date	[1]11.15				
OTHER AREAS of parental involvement or rights						

Footnotes

[2] Parents are not provided notice of this right.

[3] Conference may be used as alternative method of giving notice. [1] See also above under NOTICE.

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART II: APPEAL.

STATE: Illinois — ADMINISTRATIVE PROVISION: Rules and Regulations to Govern the Administration and Operation of Special Education (Oct. 1, 1974)

STAGES OF APPEAL		CITATION §
INITIAL APPEAL	I. REGULATORY CATEGORY: Review of educational placement. (See next page for list of bases for appeal.) HOW INITIATED: Request for review to superintendent of school district. PROCEDURE: (1) District may deny request, but must then send written notice of denial. (2) Parents may then appeal (See #II below.) If district grants request, a conference will be held. (See below) II. REGULATORY CATEGORY: Appeal of local didstrict's (1) failure to notify parents (Continued)	11.01-11.13
SUBSEQUENT APPEAL	OF: Decision following review conference. TO: Superintendent of Public Instruction. Super. may dismiss any review he deems lacking in substance. HOW INITIATED: Written request to district school Super. within 5 days of receipt of local review decision, subject to 30 day extension by mutual consent for good cause. WHEN: W/in 10 calendar days of receipt of transcript which shall be mailed to Super. (and to parents) w/in 7 calendar days of request for review. PROCEDURE: (1) Examination of placement based on study of transcript of local review conference by reviewing officer designated by Super. of Public Instruction (shall be an employee of Department of Public Instruction). (2) Reviewing officer may request (a) further information by oral testimony or in writing (b) technical assistance. DECISION: Report of review must be submitted to Super. of Public Instruction, who shall decide the matter within 30 calendar days of receipt of transcript.	11.16-11.18
JUDICIAL REVIEW		

DUE PROCESS PROVISIONS		INITIAL APPEAL NOTICE	INITIAL APPEAL PROCEDURE	SUBSEQUENT APPEAL NOTICE	SUBSEQUENT APPEAL PROCEDURE
PRE-HEARING	PRE-HEARING CONFERENCE with school officials: Upon request of parents or their representatives		X		
	NOTICE OF: (See also CONDUCT OF HEARING)				
	1. Specification of tests, instruments or reports on which proposed placement is based				
	2. Review and appeal procedures: If school denies parent's request for review, notice of denial must include reasons, within 10 days of request	X			
	3. Names of:				
	4. ~~Statement of~~ Right to:				
	a. Independent evaluation				
	b. Inspect and copy relevant records on which placement decision was based.[1]		X		
	c. Compel attendance at hearing of witnesses				
	5. Exact time and place of hearing- sent at least 5 calendar days prior to conference.	X			
	OTHER: School shall assist parents in finding representation, if parents so request		X		
HEARING	BEFORE: Conference between parents, their representatives, special education administrator, principal authors of placement decision, and appropriate local district personnel. Chairman: superintendent or designee.		X		
	WHEN: Not later than 5 calendar days after request.		X		
	CONDUCT OF HEARING:				
	1. Fair and impartial				
	2. Closed, unless open hearing is requested by:				
	3. Right of				
	a. Compel attendance of witnesses				
	b. Representation by: Unspecified		X		
	c. Present evidence and testimony - upon request by reviewing officer. (Only Subsequent Appeal requires request).		X		X
	d. Confront and cross-examine adverse witnesses		X		
	e. Interpreters for deaf and/or fluent in primary language of home				
	f. Attendance by minor child at option of parent				
	4. Burden of proof on: conference				
	5. Record of ~~hearing~~: must be made either by court reporter or by tape recorder. If latter, must be transcribed & parents must sign transcript		X		
	SCOPE OF REVIEW:[2] Seek to establish that: (1) Child has needs which require special education services; (2) evaluation procedures have been appropriate; (3) diagnostic profile is substantially verified; (4) proposed (Continued)		X		X
	DECISION FOLLOWING HEARING:				
	1. Scope: Affirmation or denial of placement decision, or recommendation of alternative procedures, including further evaluation.		X		
	a. Includes: Reasons for decision.		X		
	b. Based solely on evidence and testimony presented at hearing				
	2. Form: Sent to parents by certified mail within 5 days of completion	X			
	3. Statement of rights sent with decision: Right to appeal.	X			
	4. Other:				
OTHER DUE PROCESS PROVISIONS	A request for local review of placement stays any special education placement until review is completed.[1] §11.15.		X		

Footnotes: [1] Parents are not provided notice of this right. [2] On subsequent appeal, review shall also include a determination of compliance with special education regulations.

STAGES OF APPEAL

INITIAL APPEAL (Continued)

I. REGULATORY CATEGORY: (Continued)
Bases for appeal. Initial review of education placement is available regarding, but not limited to, the following:

(1) Failure of local district, upon request, to provide evaluation;

(2) Failure of local district to provide special education program or service;

(3) Determination made outside education system indicating eligibility for special education program or services;

(4) Initial placement;

(5) Continuing placement;

(6) Major changes in program or placement;

(7) Removal of child from special education program or service;

(8),(9) Expulsion or suspension of 12 or more days (in aggregate or individually) of child who is either in, or eligible for but not in, a special education program;
(10) Reasonable belief by parent/guardian that expulsion or suspension was for behavior or condition which is or results from exceptional characteristic;

(11) Provision of insufficient special education program or services;

(12) Failure to fulfill recommendations of multidisciplinary staff conference;

(13) Recommendation for graduation of exceptional child;

(14) Failure of school district to comply with special education regulations.

II. REGULATORY CATEGORY: (Continued)
of right to review; (2) denial of request for review, or (3) failure to provide initial review.
TO: Direct appeal to Superintendent of Public Instruction. PROCEDURE:Office of Superintendent has option to conduct review or require local district to conduct such review.

HEARING

SCOPE OF REVIEW:

(4) (Continued) placement is directly related to child's needs and/or (5)Rights of child have been fully observed.

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART I: REFERRAL, EVALUATION AND PLACEMENT.

STATE: Indiana	ADMINISTRATIVE PROVISION: Rule S-1 of the Indiana State Board of Education (Sept. 1973)	CITATION §	REFERRAL	EVALUATION	PLACEMENT	OTHER
DUE PROCESS PROVISIONS						
NOTICE to parent or guardian	OF: I. Referral for individual testing. FORM: If personal interview is refused (see below), parent may be informed by mail.	II	X			
	II. Proposed placement, denial of placement, or transfer from placement. FORM: Registered mail.	II			X	
	III. Exclusion from or transfer out of regular public school assignment.	II				X
	ITEMS ON NOTICE:					
	1. Request parent:					
	2. Description of:					
	a. Proposed or requested action, or decision: Details re placement decision				X	
	b. Reasons for ~~action or~~ decision re referral; placement		X		X	
	3. Names of persons responsible for:					
	4. Specification of tests, instruments or reports:				X	
	5. When action involves placement or denial of placement:					
	a. Description of alternative educational placements				X	
	b. Reasons why such alternative placements are not appropriate for child					
	6. Statement that parents will be informed of results of:					
	7. Statement of opportunity/right to:					
	a. Obtain independent evaluation				X	
	(1) At expense of:					
	(2) Names, addresses and telephone numbers of public agencies offering ~~free~~ evaluation				X	
	b. Meet and consult with school personnel concerning:					
	c. Participate in committee meetings regarding:					
	(1) Right to representation by:					
	8. Statement of right to:					
	a. Refuse to consent to:					
	(1) However, LEA can request hearing to try to obtain approval					
	b. Inspect and copy relevant student records				X	
	c. Appeal					
	d. Due process hearing, if parent objects to action				X	
	9. Description of:					
	a. Procedures for objecting to action or appealing decision: Request hearing				X	
	b. Procedural rights at due process hearing: Representation by counsel; present evidence (including expert testimony); confront and cross-examine school witnesses				X	
	c. Procedures for appealing decision resulting from due process hearing					
	10. List of community agencies offering legal counsel for indigents					
	11. Declaration that child's educational status will not be changed without consent of parent, or until due process procedures have been exhausted					
	a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by:					
	12. Other: I. Names of any organizations providing assistance with respect to placement questions.				X	
	II. Exclusion from or transfer out of regular public school assignment.					X
CONSULTATION with parent or guardian	I. RE: Referral for individual testing and reasons for referral.[1]	II	X			
	II. RE: Meeting with case conference committee to consider appropriate educational placement. Parents' membership on committee is optional.[2]	II	X			
CONSENT by parent or guardian	I. TO: Administration of individual tests. WHEN: Prior to test. FORM: Written.	II		X		
	II. TO: Assignment to special education class. WHEN: Prior to assignment. FORM: Written.	II			X	
OTHER AREAS of parental involvement or rights						

Footnotes

[1] See above under NOTICE.
[2] Parents are not provided notice of this right.

STATE: Indiana — ADMINISTRATIVE PROVISION: Rule S-1 of the Indiana State Board of Education (sept. 1973)

STAGES OF APPEAL		CITATION §
INITIAL APPEAL	REGULATORY CATEGORY: Hearing. See below.	II
SUBSEQUENT APPEAL	OF: I. Decision of hearing officer. II. Any matter under Rule S-1. TO: State board of special education appeals.	II (xvi)
JUDICIAL REVIEW		

DUE PROCESS PROVISIONS		INITIAL APPEAL NOTICE	INITIAL APPEAL PROCEDURE	SUBSEQUENT APPEAL NOTICE	SUBSEQUENT APPEAL PROCEDURE
PRE-HEARING	PRE-HEARING CONFERENCE with school officials				
	NOTICE OF: (See also CONDUCT OF HEARING) 1. Specification of tests, instruments or reports on which proposed placement is based				
	2. Review and appeal procedures:				
	3. Names of:				
	4. Statement of Right to: a. Independent evaluation				
	b. Inspect and copy relevant records		X		
	c. Compel attendance at hearing of witnesses		X		
	5. Exact time and place of hearing				
	OTHER:				
HEARING	BEFORE: Independent hearing officer designated by State Superintendent of Public Instruction. May not be an officer, employee or agent of local school system or local board of education.		X		
	WHEN: 20-45 days after receipt of demand for hearing.		X		
	CONDUCT OF HEARING: 1. Fair and impartial				
	2. Closed, unless open hearing is requested by: Parent/guardian		X		
	3. Right of a. Compel attendance of witnesses				
	b. Representation by: Counsel or other representative. If parents are indigent, State Superintendent shall advise of voluntary legal assistance	X	X		
	c. Present evidence and testimony, including expert testimony.	X	X		
	d. Confront and cross-examine adverse witnesses	X	X		
	e. Interpreters for deaf and/or fluent in primary language of home				
	f. Attendance by minor child at option of parent				
	4. Burden of proof on: Local school as to all facts and as to appropriateness of placement, denial of placement, or transfer.		X		
	5. Record of hearing: Required. Must be transcribed, and made available to parent upon request.		X		
	SCOPE OF REVIEW:				
	DECISION FOLLOWING HEARING: 1. Scope:				
	a. Includes: Findings of fact and conclusions of law		X		
	b. Based solely on evidence and testimony presented at hearing		X		
	2. Form: Registered mail to parent/guardian and counsel	X			
	3. Statement of rights sent with decision:				
	4. Other: Decision within 30 days after hearing		X		
OTHER DUE PROCESS PROVISIONS	Pending the outcome of the hearing, the child, if not presently in a "free" educational program, shall be provided with the program deemed suitable by the local school system staff. If already in a "free" educational program, changes to which the parents or guardians object shall not be made pending the hearing decision.		X		
Footnotes					

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART I: REFERRAL, EVALUATION AND PLACEMENT.

STATE: Iowa — ADMINISTRATIVE PROVISION: Rules of Special Education (July 1, 1975); State Plan Amendment for FY 1975	CITATION	REFERRAL	EVALUATION	PLACEMENT	OTHER
DUE PROCESS PROVISIONS					
NOTICE to parent or guardian					
OF: I. Evaluation: A. Request for permission to test. B. Results of: screening, assessment, and diagnosis. FORM: Under LEA's procedures.	State Plan§IIA2 Rules§12.19(1)(c)		X X		
OF: II. Placement: Proposed change in educational program (including proposals resulting from periodic review) or denial of parents' request for different placement. WHEN: 30 calendar days in advance of proposed action. FORM: Orally and by certified mail	State Plan II.A.3.			X	
ITEMS ON NOTICE:					
1. Request parent: Permission to test.			A		
2. Description of:					
a. Proposed or requested action, or decision: Results of screening assessment and diagnosis; proposed change in placement or denial of parent's request.			A,B	X	
b. Reasons for action or decision: Proposed evaluation; proposed placement or denial of parent's request.			A	X	
3. Names of persons responsible for: initiating process towards evaluation			A		
4. Specification of tests, instruments or reports: on which proposed placement or denial is based				X	
5. When action involves placement or denial of placement:					
a. Description of alternative educational placements				X	
b. Reasons why such alternative placements are not appropriate for child				X	
6. Statement that parents will be informed of results of: evaluation			A		
7. Statement of opportunity/right to:					
a. Obtain independent evaluation				X	
(1) At expense of: public or LEA				X	
(2) Names, addresses and telephone numbers of public agencies offering free evaluation				X	
b. Meet and consult with school personnel concerning:					
c. Participate in committee meetings regarding:					
(1) Right to representation by:					
8. Statement of right to:					
a. Refuse to consent to: Evaluation			A		
(1) However, LEA can request hearing to try to obtain approval for evaluation			A		
b. Inspect and copy relevant student records at reasonable cost			A	X	
c. Appeal					
d. Due process hearing, if parent objects to action: Proposed placement or denial				X	
9. Description of:					
a. Procedures for objecting to action or appealing decision					
b. Procedural rights at due process hearing: unspecified - all.				X	
c. Procedures for appealing decision resulting from due process hearing				X	
10. List of community agencies offering legal counsel for indigents				X	
11. Declaration that child's educational status will not be changed without consent of parent, or until due process procedures have been exhausted			A	X	
a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by: hearing officer.				X	
12. Other:					
CONSULTATION with parent or guardian I. RE: Determination of plans for habilitation prior to placement in special education (Area education agency must develop a process which provides for parental involvement.)	Rules§12.19(1)c. State Plan §II.A.2.a			X	
II. RE: Attempt to obtain permission for testing.[1]			X		
CONSENT by parent or guardian					
OTHER AREAS of parental involvement or rights					

Footnotes [1] Parents are not provided notice of this conference.

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART II: APPEAL.

STATE: Iowa — ADMINISTRATIVE PROVISION: Rules of Special Education (July 1, 1975) State Plan Amendment for FY 1975.

STAGES OF APPEAL		CITATION
INITIAL APPEAL	REGULATORY CATEGORY: Hearing - initiated by: A. Parent objecting to (1) proposed change in child's educational status or (2) denial of parent's request for a different placement. B. LEA seeking to go forward with evaluation when (1) parent fails to respond to LEA's attempts to obtain consent for evaluation (see below under OTHER DUE PROCESS PROVISIONS) or (2) parents refuse to give permission to evaluate (test). PROCEDURE: Hearing - see below.	State Plan II.A.2a, b.
SUBSEQUENT APPEAL	I. OF: Decision of State hearing officer. TO: Board of directors, of LEA. HOW INITIATED: Written notice of appeal within 10 calendar days after rendition of hearing officer's decision. PROCEDURE: Within 30 calendar days after receipt of notice of appeal, board will (1) hear oral arguments, (2) review hearing record, (3) consider no additional testimony, (4) sustain, modify or overrule decision of the State hearing officer.	State Plan II.A.2d, e.
JUDICIAL REVIEW OR FURTHER SUBSEQUENT APPEAL	II. OF: decisions of board of directors of a school district. TO: State Board of Public Instruction. PROCEDURE: As set forth in Iowa Code Chapter 290, (Appeals From Decisions of Boards of Directors)- provides for notice and hearing.	State Plan II.A.2d, e.

DUE PROCESS PROVISIONS		INITIAL APPEAL NOTICE	INITIAL APPEAL PROCEDURE	SUBSEQUENT APPEAL NOTICE	SUBSEQUENT APPEAL PROCEDURE
PRE-HEARING	PRE-HEARING CONFERENCE with school officials				
	NOTICE OF: (See also CONDUCT OF HEARING)				
	1. Specification of tests, instruments or reports on which proposed placement is based				
	2. Review and appeal procedures:				
	3. Names of: Hearing officer	X			
	4. Statement of right to:				
	a. Independent evaluation at LEA or public expense	X	X		
	b. Inspect and copy relevant records	X	X		
	c. Compel attendance at hearing of witnesses	X	X		
	5. Exact time and place of hearing - sent 20 days in advance of hearing.	X			
	OTHER: Steps shall be taken to assure child will remain in present placement UNLESS hearing officer enters a decision (except that in emergency (Continued		X		
HEARING[1]	BEFORE: State hearing officer: person or tribunal employed by State Education Agency, knowledgeable in special education, unbiased, disinterested, and independent of local decision making procedure.		X		
	WHEN:				
	CONDUCT OF HEARING:				
	1. Fair and impartial				
	2. Closed, unless open hearing is requested by: Parents. SUBSEQUENT APPEAL HEARING: as provided in Iowa open meeting law (C.28A)		X		X
	3. Right of				
	a. Compel attendance of witnesses				
	b. Representation by: Including but not limited to legal counsel.		X		
	c. Present evidence and testimony		X		
	d. Confront and cross-examine adverse witnesses		X		
	e. Interpreters for deaf and/or fluent in primary language of home at LEA or public expense.		X		
	f. Attendance by minor child at option of parent. Hearing officer may exclude upon finding that attendance would be harmful to child.		X		
	4. Burden of proof on: Parent-initiated hearing: LEA must prove appropriateness of proposed placement, why more regular placements could not serve child's needs, & adequacy & appropriateness of any test or evaluation		X		
	5. Record of hearing: Tape recording or verbatim record. Copy must be provided on request.		X		
	SCOPE OF REVIEW:				
	DECISION FOLLOWING HEARING:				
	1. Scope: Must discuss placement with reference to criteria of adequacy and appropriateness.[2] (See next page)		X		X
	a. Includes: Findings of fact, conclusions, and reasons for both.		X		
	b. Based solely on evidence and testimony presented at hearing		X		
	2. Form: Writing, sent by certified mail to all parties within 15 calendar days of hearing. SUBSEQUENT APPEAL - 5 calendar days.	X		X	
	3. Statement of rights sent with decision: Binding subject to appeal; procedures for appealing.	X		X	
	4. Other: Summary shall be made available. Shall include materials or statements specifically requested to appear in record.		X		
OTHER DUE PROCESS PROVISIONS	If parent fails to respond to LEA's repeated attempts by means in addition to regular mail (e.g., telephone, home visit) to obtain consent for evaluation, the LEA can proceed with the evaluation 20 days after written notification is sent to State hearing officer notifying him of the (Continued)				X

Footnotes [1] The items described under HEARING apply to all initial hearings, whether initiated by parents or by LEA.

DUE PROCESS PROVISIONS

PREHEARING

OTHER (Continued):

situations, a change in placement may be made by a telephone or written order issued by hearing officer.

HEARING (Continued)

4. Burden of proof. (Continued)
Hearings initiated by LEA: (1) Where parent fails to respond to LEA's attempts to obtain consent for evaluation, LEA must (a) demonstrate with documentation that it has repeatedly attempted to contact the parent through efforts that were reasonably likely to succeed, and (b) establish with facts about the child's performance in his/her present placement that there is reasonable likelihood that the child will be found to have special needs. (2) Where parent refuses to consent to evaluation, the burden of proof is on the LEA to demonstrate that the continued program placement of the pupil is so dangerous to his/her health or safety or so disruptive to the program for the other children that the initiation of the evaluation process is justified as the first step to a special program placement.

OTHER DUE PROCESS PROVISIONS (Continued)

proposed action, reasons for such action and the date on which said action will commence. 10 calendar days prior to the proposed evaluation date, the State hearing officer shall provide notice via certified mail to the parent concerning the proposed course of action, the reasons for such action, the date the proposed course of action will commence and his/her full due process rights in this proceeding.

Footnotes: [2] SUBSEQUENT APPEAL HEARING DECISION: Must include a review of the points of contention and enumerate the rationale upon which the board's decision is based.

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART I: REFERRAL, EVALUATION AND PLACEMENT.

STATE: Kansas — ADMINISTRATIVE PROVISION: Kansas State Plan for Special Education (April 1976)	CITATION	REFERRAL	EVALUATION	PLACEMENT	OTHER
DUE PROCESS PROVISIONS					
NOTICE to parent or guardian — OF: Placement decision: A. Exclusion, reassignment or transfer from regular school classes on the ground that child is an exceptional child and cannot materially benefit from such classes. WHEN: Prior to any such action FORM: See below. B. Placement in, transfer to or from, or denial of placement in special education services. This includes changes in special education programming which result from routine reevaluations of the child's progress. FORM: Oral-optional, in primary language of home. Written-mandatory by personal delivery or registered mail. In English and primary language of home. WHEN: See above.	Due Process				
ITEMS ON NOTICE:					
1. Request parent: .					
2. Description of:					
a. Proposed or requested action, or decision: exclusion, reassignment, transfer, placement or denial re regular or special education. (See above)				A,B	
b. Reasons for action or decision				A,B	
3. Names of persons responsible for:					
4. Specification of tests, instruments or reports:					
5. When action involves placement or denial of placement:					
a. Description of alternative educational placements					
b. Reasons why such alternative placements are not appropriate for child					
6. Statement that parents will be informed of results of:					
7. Statement of opportunity/right to:					
a. Obtain independent evaluation					
(1) At expense of:					
(2) Names, addresses and telephone numbers of public agencies offering free evaluation					
b. Meet and consult with school personnel concerning:					
c. Participate in committee meetings regarding:					
(1) Right to representation by:					
8. Statement of right to:					
a. ~~Refuse to consent to~~ Object to proposed action.				A,B	
(1) However, LEA can request hearing to try to obtain approval					
b. Inspect and copy relevant student records				A,B	
c. Appeal					
d. Due process hearing, if parent objects to action, upon request within 10 days				A,B	
9. Description of:					
a. Procedures for objecting to action or appealing decision					
b. Procedural rights at due process hearing:					
c. Procedures for appealing decision resulting from due process hearing					
10. List of community agencies offering legal counsel for indigents					
11. Declaration that child's educational status will not be changed without consent of parent, or until due process procedures have been exhausted					
a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by:					
12. Other:					
CONSULTATION with parent or guardian					
CONSENT by parent or guardian — TO: Any proposed action re placement[1]	Due Process			A,B	
OTHER AREAS of parental involvement or rights					

Footnotes

[1] See above under NOTICE.

STATE: Kansas — ADMINISTRATIVE PROVISION: Kansas State Plan for Special Education (April, 1976)

STAGES OF APPEAL		CITATION
INITIAL APPEAL	REGULATORY CATEGORY: Objection to proposed placement; A. Exclusion, reassignment or transfer from regular classes; B. Placement in, transfer to or from, denial of placement in special education services (includes proposals resulting from routine review). PROCEDURE: Hearing, upon request by parents or school.	Due Process
SUBSEQUENT APPEAL	OF: Decision of initial hearing. TO: Board of Education or one or more hearing officers appointed by board.[1] HOW INITIATED: By parent or school. WHEN: Maximum 10 days after receipt of notice of decision. PROCEDURE: Hearing, conducted maximum 20 calendar days after notice of appeal is filed, in accordance with local district due process procedures. Hearing officer submits written report of hearing to board. Board then determines the appeal with or without additional hearings.	Due Process
JUDICIAL REVIEW	OF: Decision of board of education. BY: District Court.	Due Process

DUE PROCESS PROVISIONS		INITIAL APPEAL NOTICE	INITIAL APPEAL PROCEDURE	SUBSQ. NOTICE	SUBSQ. PROCEDURE
PRE-HEARING[2]	PRE-HEARING CONFERENCE with school officials				
	NOTICE OF: (See also CONDUCT OF HEARING)				
	1. Specification of tests, instruments or reports on which proposed placement is based				
	2. Review and appeal procedures: Description of procedure for appeal of decision resulting from initial due process hearing	X			
	3. Names of:				
	4. Statement of right to:				
	a. Independent evaluation	X			
	b. Inspect and copy relevant records - includes report of testimony of witnesses responsible for recommending the proposed action	X			
	c. Compel attendance at hearing of witnesses				
	5. Exact time and place of hearing - SUBSEQUENT APPEAL HEARING notice must be given at least 5 days prior to hearing	X		X	
	OTHER:				
HEARING[2]	BEFORE: Impartial hearing officer: certified employee of school district but not the same person responsible for recommending proposed action on which hearing is based. WHEN: 15 - 30 days after parents receive notice of proposed action.		X		X[1]
	CONDUCT OF HEARING:				
	1. Fair and impartial decision must be made - right to; right to orderly hearing also	X	X		
	2. Closed, unless open hearing is requested by: parents		X		
	3. Right of				
	a. Compel attendance of witnesses				
	b. Representation by: Counsel	X			
	c. Present evidence and testimony including expert testimony and including child testifying in his behalf	X	X		
	d. Confront and cross-examine adverse witnesses				
	e. Interpreters for deaf and/or fluent in primary language of home at expense of school district		X		
	f. Attendance by minor child at option of parent - Hearing officer may exclude child if presence is harmful	X	X		
	4. Burden of proof on: LEA as to appropriateness of proposed placement		X		
	5. Record of hearing: SUBSEQUENT APPEAL HEARING: tape recording or verbatim record.				X
	SCOPE OF REVIEW:				
	DECISION FOLLOWING HEARING:				
	1. Scope:				
	a. Includes: findings of fact and conclusions of law, and reasons for both		X		
	b. Based solely on evidence and testimony presented at hearing		X		
	2. Form: Writing. Sent to parents by registered mail within 24 hours after results are determined	X			
	3. Statement of rights sent with decision: SUBSEQUENT APPEAL HEARING: Appeal to district court under K.S.A. 60-2101			X	
	4. Other: A summary of proceedings shall be made and available. Must include materials or statements requested by any of the parties to appear in the record. SUBSEQUENT APPEAL HEARING: Decision by board of education (see above) must be rendered maximum 5 days after hearing.		X		X
OTHER DUE PROCESS PROVISIONS					

Footnotes: [1] Such appointee may be: member of board, attorney or certified member of school district, but independent of initial proposal or initial hearing. [2] Unless otherwise indicated, descriptive information typed in applies to the initial hearing, not to subsequent appeal hearing(s).

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART I: REFERRAL, EVALUATION AND PLACEMENT.

STATE: Kentucky — ADMINISTRATIVE PROVISION: Kentucky Administrative Regulations on Programs for Exceptional Children - 707 KAR 1:050 (November 1975)	CITATION	REFERRAL	EVALUATION	PLACEMENT	OTHER
DUE PROCESS PROVISIONS					
NOTICE to parent or guardian					
I. OF: Referral for program for exceptional children. FORM: Written and oral, in English and in primary language of home.	§1(11) (b),(c)	X			
II. OF: Evaluation- request to test, right to refuse permission. FORM:Written and oral, in English and in primary language of home.	§1(11) (c),(d)		X		
III. OF: Proposed change in educational program. FORM: Orally and by certified mail, in English and in primary language of home.	§1(11) (g),(o)			X	
IV. OF: Verification of continued placement in program for special children. WHEN: At beginning of school year. FORM: Written.	§1(11)(h)				X
ITEMS ON NOTICE:					
1. Request parent: Permission to administer tests			X		
2. Description of:					
a. Proposed or requested action, or decision: Referral, and right of child to receive educational opportunity from public schools; change of placement.		X		X	
b. Reasons for action or decision : Proposed change of placement.				X	
3. Names of persons responsible for:					
4. Specification of tests, instruments or reports: on which proposed change of placement is based.				X	
5. When action involves placement or denial of placement:					
a. Description of alternative educational placements				X	
b. Reasons why such alternative placements are not appropriate for child				X	
6. Statement that parents will be informed of results of:					
7. Statement of opportunity/right to:					
a. Obtain independent evaluation				X	
(1) At expense of:					
(2) Names, addresses and telephone numbers of public agencies offering free evaluation					
b. Meet and consult with school personnel concerning:					
c. Participate in committee meetings regarding:					
(1) Right to representation by:					
8. Statement of right to:					
a. Refuse to consent to: Testing			X		
(1) However, LEA can request hearing to try to obtain approval to test.			X		
b. Inspect and copy relevant student records			X	X	
c. Appeal					
d. Due process hearing, if parent objects to action - proposed change in placement				X	
9. Description of:					
a. Procedures for objecting to action or appealing decision - proposed change in placement				X	
b. Procedural rights at due process hearing:					
c. Procedures for appealing decision resulting from due process hearing					
10. List of community agencies offering legal counsel for indigents				X	
11. Declaration that child's educational status will not be changed without consent of parent, or until due process procedures have been exhausted				X	
a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by:					
12. Other:					
CONSULTATION with parent or guardian					
CONSENT by parent or guardian					
I. TO: Individual tests.[1] FORM: Written.	§1(11)(d)		X		
II. TO: Placement in program for exceptional children.[1] WHEN: Prior to placement. FORM: Written.	§1(11)(h)			X	
OTHER AREAS of parental involvement or rights					

Footnotes

[1] See above under NOTICE.

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART II: APPEAL.

STATE: Kentucky — ADMINISTRATIVE PROVISION: Kentucky Administrative Regulations on Programs for Exceptional Children - 707 KAR 1:050 (November 1975).

STAGES OF APPEAL		CITATION
INITIAL APPEAL	REGULATORY CATEGORY: Appeal by A. Parent, where disagreement on need for evaluation and/or educational placement. B. Local school district where 1. Parent denies school permission to test. 2. Parent fails to respond to school's attempts to obtain consent to test. PROCEDURE: Conference/hearing between parents, Admissions and Release Committee, and hearing officer.	$1(11) (l),(o) $1(11) (d),(f) $1(11)(e)
SUBSEQUENT APPEAL	OF: Decision of hearing officer. TO: State Board of Education or its impartial designee, who must meet all the requirements described for hearing officers. PROCEDURE: In accordance with state administrative procedures.	$1(11) (k) 1,2
JUDICIAL REVIEW	OF: Decision of State Board of Education or designee. TO: State Court.	$1(11) (k)(3)

DUE PROCESS PROVISIONS		INITIAL APPEAL NOTICE	INITIAL APPEAL PROCEDURE	SUBSEQUENT APPEAL NOTICE	SUBSEQUENT APPEAL PROCEDURE
PRE-HEARING	PRE-HEARING CONFERENCE with school officials				
	NOTICE OF: (See also CONDUCT OF HEARING)				
	1. Specification of tests, instruments or reports on which proposed placement is based				
	2. Review and appeal procedures:				
	3. Names of:				
	4. Statement of right to:				
	a. Independent evaluation				
	b. Inspect and copy relevant records				
	c. Compel attendance at hearing of witnesses				
	5. Exact time and place of hearing : 5 days prior to hearing.	X			
	OTHER: Notice regarding full due process rights at hearing shall be given where school requests hearing where parent failed to respond (B-2 above).		X		
HEARING	BEFORE: Hearing officer - unbiased and disinterested		X		
	WHEN:				
	CONDUCT OF HEARING:				
	1. Fair and Impartial				
	2. Closed, unless open hearing is requested by : Parents.		X		
	3. Right of				
	a. Compel attendance of witnesses				
	b. Representation by: Counsel and other professional persons.		X		
	c. Present evidence and testimony		X		
	d. Confront and cross-examine adverse witnesses		X		
	e. Interpreters for deaf and/or fluent in primary language of home		X		
	f. Attendance by minor child at option of parent				
	4. Burden of proof on: See next page.		X		
	5. Record of hearing: Transcript provided upon request.		X		
	SCOPE OF REVIEW:				
	DECISION FOLLOWING HEARING:				
	1. Scope:				
	a. Includes: Summary of proceedings and reasons for decision.		X		
	b. Based solely on evidence and testimony presented at hearing		X		
	2. Form: Sent by certified mail within 5 days of completion of conference	X			
	3. Statement of rights sent with decision: Procedures for appeal.		X		
	4. Other:				
OTHER DUE PROCESS PROVISIONS					

Footnotes

S T A T E : Kentucky

PART II: (Continued)

HEARING

4. Burden of proof on:

A. In parent-initiated appeal, local school district shall provide factual information concerning the appropriateness of the proposed evaluation or educational placement.

B. In school-initiated appeal where:

1. Parent denied school permission to test, school's request for a hearing should (a) document that resolution by conference with parents has been attempted and failed; (b) demonstrate that the initiation of the evaluation procedure is justified because the present placement is detrimental to child or disruptive to other children.

2. Parent failed to respond to school's attempts to obtain permission, the school shall (a) demonstrate with documentation that it has repeatedly attempted to contact the parent(s) through efforts that were reasonably likely to succeed; (b) established with facts about the child's performance in his/her present placement that there is reasonable liklihood that the child will be found to have special needs.

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART I: REFERRAL, EVALUATION AND PLACEMENT.

STATE: Louisiana	ADMINISTRATIVE PROVISION: Guidelines for Pupil Appraisal Services Bulletin 1264 (undated)	CITATION §	REFERRAL	EVALUATION	PLACEMENT	OTHER
DUE PROCESS PROVISIONS						
NOTICE to parent or guardian	OF: Referral - termination of referral process. FORM: Conference or in writing, depending on source of referral.	(06) (10)	X			
	ITEMS ON NOTICE:					
	1. Request parent:					
	2. Description of:					
	a. Proposed or requested action, or decision: Termination of referral process-process to be reinstated upon request by parent.		X			
	b. Reasons for action or decision					
	3. Names of persons responsible for:					
	4. Specification of tests, instruments or reports:					
	5. When action involves placement or denial of placement:					
	a. Description of alternative educational placements					
	b. Reasons why such alternative placements are not appropriate for child					
	6. Statement that parents will be informed of results of:					
	7. Statement of opportunity/right to:					
	a. Obtain independent evaluation					
	(1) At expense of:					
	(2) Names, addresses and telephone numbers of public agencies offering free evaluation					
	b. Meet and consult with school personnel concerning:					
	c. Participate in committee meetings regarding:					
	(1) Right to representation by:					
	8. Statement of right to:					
	a. Refuse to consent to:					
	(1) However, LEA can request hearing to try to obtain approval					
	b. Inspect and copy relevant student records					
	c. Appeal					
	d. Due process hearing, if parent objects to action					
	9. Description of:					
	a. Procedures for objecting to action or appealing decision					
	b. Procedural rights at due process hearing:					
	c. Procedures for appealing decision resulting from due process hearing					
	10. List of community agencies offering legal counsel for indigents					
	11. Declaration that child's educational status will not be changed without consent of parent, or until due process procedures have been exhausted					
	a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by:					
	12. Other:					
CONSULTATION with parent or guardian	I.RE:Review of case with teacher making referral to determine what action is needed to help child.[1] II.RE: Referral process, reason for referral, & possible recommendations from further testing.Recommendations will be discussed prior to placement.[1] III. RE:Social worker's obtaining info. re developmental history.[1] IV. RE: Terminal conference giving results of evaluation & recommendations.[1]	(06) (08),(10) (10) (54)	I II	III IV		
CONSENT by parent or guardian	I. TO:Referral.[1] FORM: Written.	(08)	X			
	II.TO: Further evaluation following referral.[1] FORM:Written.	(08)		X		
	III.TO: Placement.[1] FORM: Written.	(64)			X	
OTHER AREAS of parental involvement or rights	I. If the parent does not consent to continue the referral process, and will not give written permission for case study, the case is then closed. Parent may subsequently request reactivation.	(09)				X
	II.Parent has right to have child retested.[1] §(54).	(17)				X

Footnotes [1] Parents are not provided notice of this right.

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART II: APPEAL.

STATE: Louisiana ADMINISTRATIVE PROVISION: Guidelines for Pupil Appraisal Services Bulletin 1264.

STAGES OF APPEAL		CITATION
INITIAL APPEAL	I. REGULATORY CATEGORY: I. Review of terminal decision (i.e., recommendations re: placement). PROCEDURE: Conference of diagnostic and evaluation team - parent not included. II. REGULATORY CATEGORY: Appeal of terminal decision re evaluation findings and/or recommendations re placement. PROCEDURE: Mediation[1] by Parish Special Education Monitoring Council, which includes parent and representative. See below.	(60) (61)
SUBSEQUENT APPEAL		
JUDICIAL REVIEW	OF: Which is the correct evaluation: that of school, or that resulting from parent- initiated retesting. BY: District or juvenile court.	(54)

DUE PROCESS PROVISIONS		INITIAL APPEAL NOTICE	INITIAL APPEAL PROCEDURE	SUBSEQUENT APPEAL NOTICE	SUBSEQUENT APPEAL PROCEDURE
PRE-HEARING	PRE-HEARING CONFERENCE with school officials				
	NOTICE OF: (See also CONDUCT OF HEARING)				
	1. Specification of tests, instruments or reports on which proposed placement is based				
	2. Review and appeal procedures:				
	3. Names of:				
	4. Statement of right to:				
	a. Independent evaluation				
	b. Inspect and copy relevant records				
	c. Compel attendance at hearing of witnesses				
	5. Exact time and place of hearing				
	OTHER:				
HEARING MEDIATION	BEFORE: Parish Special Education Monitoring Council composed of 2 professionals, 1 ombudsman (school board member), consultants and parents, plus a representative of parents' choice.		X		
	WHEN:				
	CONDUCT OF HEARING:				
	1. Fair and impartial				
	2. Closed, unless open hearing is requested by:				
	3. Right of				
	a. Compel attendance of witnesses				
	b. Representation by:				
	c. Present evidence and testimony				
	d. Confront and cross-examine adverse witnesses				
	e. Interpreters for deaf and/or fluent in primary language of home				
	f. Attendance by minor child at option of parent				
	4. Burden of proof on:				
	5. Record of hearing:				
	SCOPE OF REVIEW:				
	DECISION FOLLOWING HEARING:				
	1. Scope: Council may make appropriate recommendations to parent and school officials.		X		
	a. Includes:				
	b. Based solely on evidence and testimony presented at hearing				
	2. Form:				
	3. Statement of rights sent with decision:				
	4. Other:				
OTHER DUE PROCESS PROVISIONS					

Footnotes [1] No details are provided regarding procedures for mediation.

STATE: Maine — ADMINISTRATIVE PROVISION: Special Education Administrative Handbook (Jan. 1974)

DUE PROCESS PROVISIONS		CITATION §	REFERRAL	EVALUATION	PLACEMENT	OTHER
NOTICE to parent or guardian	OF: Decision re proposed special education program.	IV VIII A.			X	
	FORM: Primary language of home.					
	ITEMS ON NOTICE:					
	1. Request parent:					
	2. Description of:					
	a. Proposed ~~or requested action, or~~ decision: Re program				X	
	b. Reasons for action or decision: Purposes and scope of proposed program				X	
	3. Names of persons responsible for:					
	4. Specification of tests, instruments or reports:					
	5. When action involves placement or denial of placement:					
	a. Description of alternative educational placements					
	b. Reasons why such alternative placements are not appropriate for child					
	6. Statement that parents will be informed of results of:					
	7. Statement of opportunity/right to:					
	a. Obtain independent evaluation					
	(1) At expense of:					
	(2) Names, addresses and telephone numbers of public agencies offering free evaluation					
	b. Meet and consult with school personnel concerning:					
	c. Participate in committee meetings regarding:					
	(1) Right to representation by:					
	8. Statement of right to:					
	a. Refuse to consent to:					
	(1) However, LEA can request hearing to try to obtain approval					
	b. Inspect and copy relevant student records					
	c. Appeal					
	d. ~~Request~~ Due process hearing, if parent objects to action				X	
	9. Description of:					
	a. Procedures for objecting to action or appealing decision					
	b. Procedural rights at due process hearing:					
	c. Procedures for appealing decision resulting from due process hearing					
	10. List of community agencies offering legal counsel for indigents					
	11. Declaration that child's educational status will not be changed without consent of parent, or until due process procedures have been exhausted					
	a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by:					
	12. Other: Nature of child's exceptionality				X	
CONSULTATION with parent or guardian						
CONSENT by parent or guardian						
OTHER ASPECTS of parental involvement or rights						
Footnotes						

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART II: APPEAL.

STATE: Maine — ADMINISTRATIVE PROVISION: Special Education Administrative Handbook (Jan. 1974)

STAGES OF APPEAL		CITATION
INITIAL APPEAL	REGULATORY CATEGORY: Appeal by parents/guardian of school's decisions re (1) Placement, (2) Denial of placement, or (3) Continuance of child in program of education appropriate to condition and needs. PROCEDURE: Hearing. (See below). Details of procedure are to be provided by school administrative unit but procedure must cover points set forth below.	VIII B-J
SUBSEQUENT APPEAL	OF: Decision from hearing. TO: State Board of Education. PROCEDURE: State Board will consider the request and may appoint an appeal hearing officer to review the record of the hearing and to conduct an appeal hearing.	VIII K
JUDICIAL REVIEW		

DUE PROCESS PROVISIONS		INITIAL APPEAL		SUBSEQUENT APPEAL	
		NOTICE	PROCEDURE	NOTICE	PROCEDURE
PRE-HEARING	PRE-HEARING CONFERENCE with school officials				
	NOTICE OF: (See also CONDUCT OF HEARING)				
	1. Specification of tests, instruments or reports on which proposed placement is based				
	2. Review and appeal procedures:				
	3. Names of:				
	4. Statement of right to:				
	a. Independent evaluation				
	b. Inspect and copy relevant records		X		
	c. Compel attendance at hearing of witnesses				
	5. Exact time and place of hearing	X			
	OTHER:				
HEARING	BEFORE: I. Initial appeal: local school committee or board of directors, or hearing official.[1] II. Subsequent appeal: appeal hearing officer.		X		X
	WHEN: Reasonable promptness. At least 7 days notice of hearing	X	X		
	CONDUCT OF HEARING:				
	1. Fair and Impartial				
	2. Closed, unless open hearing is requested by:				
	3. Right of				
	a. Compel attendance of witnesses				
	b. Representation by: Attorney or other person		X		
	c. Present evidence and testimony		X		
	d. ~~Confront and cross-examine adverse witnesses~~ Question or refute contrary evidence		X		
	e. Interpreters for deaf and/or fluent in primary language of home				
	f. Attendance by minor child at option of parent				
	4. Burden of proof on:				
	5. Record of hearing: Must include decision appealed and evidence presented at hearing; must be preserved for at least 2 years		X		
	SCOPE OF REVIEW:				
	DECISION FOLLOWING HEARING:				
	1. Scope:				
	a. Includes:				
	b. Based solely on evidence and testimony presented at hearing which was made part of the hearing record		X		
	2. Form: Notice of decision to be sent to parent forthwith	X			
	3. Statement of rights sent with decision:				
	4. Other:				
~~OTHER DUE PROCESS PROVISIONS~~ Footnotes					

[1] School committee or board of directors may elect to appoint a hearing official instead of conducting hearing themselves. In this event, hearing official must be appointed by mutual agreement between board of directors and parent or guardian. This person shall not have participated in making the decision under appeal. If agreement between board and parent/guardian cannot be reached, the Commissioner of the Department of Ed. and Cultural Services shall appoint a hearing official. § VIII.F.

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART I: REFERRAL, EVALUATION AND PLACEMENT.

STATE: Maryland	ADMINISTRATIVE PROVISION: Special Education Bylaw 13.01.04.01	CITATION	REFERRAL	EVALUATION	PLACEMENT	OTHER
DUE PROCESS PROVISIONS						
NOTICE to parent or guardian	OF:					
	ITEMS ON NOTICE:					
	1. Request parent:					
	2. Description of:					
	a. Proposed or requested action, or decision:					
	b. Reasons for action or decision					
	3. Names of persons responsible for:					
	4. Specification of tests, instruments or reports:					
	5. When action involves placement or denial of placement:					
	a. Description of alternative educational placements					
	b. Reasons why such alternative placements are not appropriate for child					
	6. Statement that parents will be informed of results of:					
	7. Statement of opportunity/right to:					
	a. Obtain independent evaluation					
	(1) At expense of:					
	(2) Names, addresses and telephone numbers of public agencies offering free evaluation					
	b. Meet and consult with school personnel concerning:					
	c. Participate in committee meetings regarding:					
	(1) Right to representation by:					
	8. Statement of right to:					
	a. Refuse to consent to:					
	(1) However, LEA can request hearing to try to obtain approval					
	b. Inspect and copy relevant student records					
	c. Appeal					
	d. Due process hearing, if parent objects to action					
	9. Description of:					
	a. Procedures for objecting to action or appealing decision					
	b. Procedural rights at due process hearing:					
	c. Procedures for appealing decision resulting from due process hearing					
	10. List of community agencies offering legal counsel for indigents					
	11. Declaration that child's educational status will not be changed without consent of parent, or until due process procedures have been exhausted					
	a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by:					
	12. Other:					
CONSULTATION with parent or guardian						
CONSENT by parent or guardian	TO: I. Psychological evaluation[1]; II. Special education programming[1]; III. Placement[1] WHEN: Prior to each event FORM: Informed. In accordance with LEA's procedures.	13.01 04.03 C.	I	II	III	
OTHER AREAS of parental involvement or rights	Right to review information pertaining to screening, assessment, educational management plan, and exclusion or exemption from school privileges, in accordance with Art. 77f. 100H[1] (provides for hearing).	13.01. 04.03A.		X	X	X

Footnotes [1] Parents are not provided notice of this right.

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART II: APPEAL.

STATE : Maryland ADMINISTRATIVE PROVISION: Special Education Bylaw 13.04.01.01

STAGES OF APPEAL		CITATION
INITIAL APPEAL	REGULATORY CATEGORY: Right to review for good cause: (1) Diagnosis, (2) Evaluation or educational program, (3) Exclusion or exemption from school privileges. PROCEDURE: Hearing held by each local board of education under local board procedures in keeping with State Board of Education standards.	13.01.04 03.B.
SUBSEQUENT APPEAL	OF:Final decision after exhaustion of all locally available administrative remedies and procedures. TO: State Board of Education. HOW INITIATED: By request of parents or local board of education. PROCEDURE: Within 60 days after receipt of request for hearing as indicated in Article 77, Section 100A,(Annotated Code of Maryland). State Board of Education shall implement the procedures.	13.01.04 03.B
JUDICIAL REVIEW		

DUE PROCESS PROVISIONS		INITIAL APPEAL NOTICE	INITIAL APPEAL PROCEDURE	SUBSEQUENT APPEAL NOTICE	SUBSEQUENT APPEAL PROCEDURE
PRE-HEARING	PRE-HEARING CONFERENCE with school officials				
	NOTICE OF: (See also CONDUCT OF HEARING)				
	1. Specification of tests, instruments or reports on which proposed placement is based				
	2. Review and appeal procedures:				
	3. Names of:				
	4. Statement of right to:				
	a. Independent evaluation				
	b. Inspect and copy relevant records				
	c. Compel attendance at hearing of witnesses				
	5. Exact time and place of hearing				
	OTHER:				
HEARING	BEFORE:				
	WHEN:				
	CONDUCT OF HEARING:				
	1. Fair and impartial				
	2. Closed, unless open hearing is requested by :				
	3. Right of				
	a. Compel attendance of witnesses				
	b. Representation by:				
	c. Present evidence and testimony				
	d. Confront and cross-examine adverse witnesses				
	e. Interpreters for deaf and/or fluent in primary language of home				
	f. Attendance by minor child at option of parent				
	4. Burden of proof on:				
	5. Record of hearing:				
	SCOPE OF REVIEW:				
	DECISION FOLLOWING HEARING:				
	1. Scope:				
	a. Includes:				
	b. Based solely on evidence and testimony presented at hearing				
	2. Form:				
	3. Statement of rights sent with decision:				
	4. Other:				
OTHER DUE PROCESS PROVISIONS					

Footnotes

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART I: REFERRAL, EVALUATION AND PLACEMENT.

STATE: Massachusetts — ADMINISTRATIVE PROVISION: Regulations for the Implementation of Chapter 766 of the Acts of 1972: The Comprehensive Special Education Law (Oct. 1975)	CITATION §	REFERRAL	EVALUATION	PLACEMENT	OTHER
DUE PROCESS PROVISIONS					
NOTICE to parent or guardian — OF: I. Referral for evaluation. FORM: Written.	317.0	X			
II. Completion of evaluation. FORM: Written. WHEN: Within 10 days of completion of evaluation and educational plan.[1]	324.0		X		
III. Child age 14-21: right to be present and participate in writing education plan	311,12				X
IV. Summary of review of progress in special education program. WHEN: Annual, within 10 days of completion of review. FORM: Written.	332.0				X
ITEMS ON NOTICE:					
1. Request parent:					
2. Description of:					
a. Proposed or requested action, or decision: Referral for education and nature of evaluation process; completion of evaluation and copy of ed. plan or finding of no need for special education; choice of options re ed. plan		X	X		
b. Reasons for action or decision					
3. Names of persons responsible for: Making referral		X			
4. Specification of tests, instruments or reports:					
5. When action involves placement or denial of placement:					
a. Description of alternative educational placements					
b. Reasons why such alternative placements are not appropriate for child					
6. Statement that parents will be informed of results of: Evaluation, including copy of ed. plan and right to meet with school re plan.		X			
7. Statement of opportunity/right to:					
a. Obtain Independent evaluation		X			
(1) At expense of: Public, if approved facility, otherwise, at private expense.		X			
(2) Names, addresses and telephone numbers of public agencies offering free evaluation - parent has choice of facility.			X		
b. Meet and consult with school personnel concerning: Evaluation team prior to evaluation; after evaluation and plan (including 30-day "cooling off" period.		X	X		
c. Participate in committee meetings regarding: Development and writing of education plan. (Child also has right if 14-21.)		X			
(1) Right to representation by: One or two persons of his/her choice (207.0).			X		
8. Statement of right to:					
a. Refuse to consent to: educational plan and placement.		X	X		
(1) However, LEA can request hearing to try to obtain approval					
b. Inspect and copy relevant student records			X		
c. Appeal		X	X		
d. Due process hearing, if parent objects to action					
9. Description of:					
a. Procedures for objecting to action or appealing decision resulting from evaluation		X	X		
b. Procedural rights at due process hearing: Hearing procedure			X		
c. Procedures for appealing decision resulting from due process hearing: entire appeal process, including statement of placement pending independent evaluation.			X		
10. List of community agencies offering legal counsel for indigents					
11. Declaration that child's educational status will not be changed without consent of parent, or until due process procedures have been exhausted					
a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by:					
12. Other: a. Right to full evaluation even if school recommended only intermediate evaluation. b. Evaluation is to be completed within 30 school working days after date on notice letter. c. Intended placement of child during evaluation process.		X X X			
CONSULTATION with parent or guardian — I. RE: Referral for evaluation[2] - reasons for referral, notice of evaluation. WHEN: Prior to evaluation.	317.4, 318.0	X			
II. RE: Evaluation of educational plan.[1,2] WHEN: Within 15 days after notice of completion of education plan has gone out.	323.0		X		
III. RE: Resolution of differences of opinion re educational plan.[2] WHEN: 30 day period beginning with receipt of parent's rejection of plan.	400			X	
CONSENT by parent or guardian — I. TO: Implementation of education plan.[2] FORM: Written.	329.0			X	
II. TO: Any modification of child's educational plan.[2] FORM: Written.	337.1(b)			X	
OTHER AREAS of parental involvement or rights — Pending evaluation, appeal or postponement of decision to appeal, child is to remain in program he/she was in at time of referral on evaluation, unless (1) if child was regular education program-child or parents show, in writing that program endangers child or others; (2) if child was in special education (Continued)	326.2				

Footnotes: [1] Any new or modified education plan must conform to all notice requirements and other parental rights as per original plan. §336.0 (Continued)

OTHER AREAS of parental involvement or rights:

program paid for by school committee and parents want regular education program, then child shall be placed in regular education program unless school committee shows danger to child or others, or (3) if child was neither in regular program nor special education program paid for by school committee, then as determined by agreement between school committee and parents, or by regional office, if no agreement can be reached. §326.2. All

All communications to parents in primary language of the home (203.0).

Footnotes

[2] See above under NOTICE

[3] Parents are not provided notice of this right.

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART II: APPEAL.

STATE: Massachusetts ADMINISTRATIVE PROVISION: Regulations for the Implementation of Chapter 766 of the Acts of 1972: The Comprehensive Special Education Law (Oct. 1975)

STAGES OF APPEAL		CITATION S
INITIAL APPEAL	REGULATORY CATEGORY: Appeal of educational plan or finding of no need for special education services. Parent's rejection of plan or finding is automatic appeal. PROCEDURE: Hearing (see below) or no hearing. In latter case, hearing officer renders decision on basis of all relevant documents and materials, including results of any independent evaluation.	401-405
SUBSEQUENT APPEAL	OF: Decision of hearing officer where parents want special education program or different special education program from that recommended by hearing officer. TO: State Advisory Commission (SAC). PROCEDURE: Meeting of SAC maximum 30 days after next meeting following receipt of parent's rejection of hearing decision (automatic appeal to SAC). SCOPE OF REVIEW: Order placement recommended by hearing officer, by school, or by parents.	406-408
JUDICIAL REVIEW	I. OF: Order of SAC. TO: Superior Court. WHEN: 30 days after receipt of notice of order. II. OF: Decision of hearing officer recommending special education placement and parents want regular. School shall provide regular placement or else school must show, in Superior Court, that such placement would be dangerous.	409 403,406

DUE PROCESS PROVISIONS		INITIAL APPEAL NOTICE	INITIAL APPEAL PROCEDURE	SUBSEQUENT APPEAL NOTICE	SUBSEQUENT APPEAL PROCEDURE
PRE-HEARING	PRE-HEARING CONFERENCE with school officials				
	NOTICE OF: (See also CONDUCT OF HEARING)				
	1. Specification of tests, instruments or reports on which proposed placement is based				
	2. Review and appeal procedures: Right to hearing, instructions to request hearing, and description of law governing hearing procedure.	X			
	3. Names of:				
	4. Statement of right to:				
	a. Independent evaluation at public or private expense	X	X		
	b. Inspect and copy relevant records	X	X		
	c. Compel attendance at hearing of witnesses				
	5. Exact time and place of hearing	X			
	OTHER: Notice of parents' right to reject decision of hearing officer and either request child be placed in regular education program or appeal decision	X			
HEARING	BEFORE:				
	State Bureau of Special Education Appeals hearing officer		X		
	WHEN: No later than 60 days after receipt by Bureau of request for hearing		X		
	CONDUCT OF HEARING: - governed by State Administrative Procedure Act				
	1. Fair and Impartial	X	X		
	2. Closed, ~~unless open hearing is requested by~~:	X	X		
	3. Right of				
	a. Compel attendance of witnesses				
	b. Representation by: Person of own choosing, such as expert in child's needs, or attorney, or both	X	X		
	c. Present evidence and testimony				
	d. Confront and cross-examine adverse witnesses				
	e. Interpreters for deaf and/or fluent in primary language of home				
	f. Attendance by minor child at option of parent				
	4. Burden of proof on:				
	5. Record of hearing:				
	SCOPE OF REVIEW:				
	DECISION FOLLOWING HEARING:				
	1. Scope: Must specify placement desired by school, by parent, or alternative. If alternative, school must write plan incorporating decision.		X		
	a. Includes:				
	b. Based solely on evidence and testimony presented at hearing- must comply with State Administrative Procedure Act.		X		X
	2. Form: Writing, sent to parents no later than 3 days after rendered.	X		X	
	3. Statement of rights sent with decision: Options re decision of hearing officer; right to appeal to court.	X		X	
	4. Other: No later than 30 days after completion of hearing.		X		
OTHER DUE PROCESS PROVISIONS	All communications to parents in primary language of the home (203.0).				

Footnotes

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART I: REFERRAL, EVALUATION AND PLACEMENT.

STATE: Michigan	ADMINISTRATIVE PROVISION: Michigan Special Education Code under the Provisions of Public Act 198 of 1971 (Oct. 10, 1973); Guidelines for Special Education Programs and Services in Michigan (1974)	CITATION §	REFERRAL	EVALUATION	PLACEMENT	OTHER
DUE PROCESS PROVISIONS						
NOTICE to parent or guardian	OF: Placement: A. Request parents to participate on committee developing recommendations to change educational status. FORM: Certified letter or other letter delivered in person followed by parental signature of receipt.	R.340. 1722(b)			X	
	B. Proposed placement, denial of placement, or change in educational status. WHEN: Within 30 days prior to effectuating proposed placement. FORM: Personally in conference or by certified mail.	R.340. 1723(1)			X	
	ITEMS ON NOTICE:					
	1. Request parent: To participate on committee developing recommendations to change educational status.				A	
	2. Description of: a. Proposed ~~or requested action, or decision:~~ placement, denial of placement or change in educational status; description of relevant statute re proposed placement.				B	
	b. Reasons for action or decision denial or change					
	3. Names of persons responsible for:					
	4. Specification of tests, instruments or reports: On which proposed placement, denial or change is based.				B	
	5. When action involves placement or denial of placement: a. Description of alternative educational placements				B	
	b. Reasons why such alternative placements are not appropriate for child					
	6. Statement that parents will be informed of results of:					
	7. Statement of opportunity/right to: a. Obtain independent evaluation					
	(1) At expense of:					
	(2) Names, addresses and telephone numbers of public agencies offering free evaluation					
	b. Meet and consult with school personnel concerning:					
	c. Participate in committee meetings regarding:					
	(1) Right to representation by:					
	8. Statement of right to: a. Refuse to consent to: Placement.				B	
	(1) However, LEA can request hearing to try to obtain approval					
	b. Inspect and copy relevant student records					
	c. Appeal					
	d. Due process hearing, if parent objects to action				B	
	9. Description of: a. Procedures for objecting to action or appealing decision: Includes providing forms for objection				B	
	b. Procedural rights at due process hearing;					
	c. Procedures for appealing decision resulting from due process hearing				B	
	10. List of community agencies offering ~~legal counsel for indigents~~ assistance to parents at hearing				B	
	11. Declaration that child's educational status will not be changed without consent of parent, or until due process procedures have been exhausted					
	a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by:					
	12. Other: Findings of review of educational placement of each handicapped person receiving special education programs and services on effective date of code. R.340.1722 (e) WHEN: Within 90 days after effective date.					X
CONSULTATION with parent or guardian	RE: Rights to notice. (See above under NOTICE)				X	
CONSENT by parent or guardian	I. TO: Referral for special education by community practitioner.[1]	Guidelines	X			
	II. TO: Educational placement recommendation.[2] FORM: Parent's signature.	Guidelines			X	
	III. TO: Termination of appeal procedure. FORM: Written statement of resolution of concerns.	R.340. 1723(2)				X
OTHER AREAS of parental involvement or rights	Change in educational assignment shall not be made during period between notice of placement and parent's request for hearing.[1]					X

Footnotes

[1] Parents are not provided with notice of this right. [2] See above under NOTICE.

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART II: APPEAL.

STATE: Michigan — ADMINISTRATIVE PROVISION: Michigan Special Education Code under the Provisions of P.A.198 of 1971 (Oct. 10, 1973); Guidelines for Special Education Programs and Services in Mich.1974

STAGES OF APPEAL		CITATION
INITIAL APPEAL	REGULATORY CATEGORY: Right to contest proposed educational placement, denial of placement or change in educational status of handicapped person. PROCEDURE: Hearing. (See below)	R.340. 1723(a)
SUBSEQUENT APPEAL	OF: Decision of hearing officer. TO: Superintendent of public instruction or designee. PROCEDURE: (1) All records of the school district hearing, including evidence of hearing, shall be submitted to Superintendent of Public Instruction for review. (2)The decision of the Super. or designee may(a) be made entirely from such records, or (b)he may require a full hearing involving all or selected parties in the case, and review the decision de novo.DECISION. The Super. or his designee may affirm, reverse or modify the decision of the hearing officer or may remand the matter to the hearing officer for further proceedings.	R.340. 1725
JUDICIAL REVIEW		

DUE PROCESS PROVISIONS		INITIAL APPEAL NOTICE	INITIAL APPEAL PROCEDURE	SUBSEQUENT APPEAL NOTICE	SUBSEQUENT APPEAL PROCEDURE
PRE-HEARING	PRE-HEARING CONFERENCE with school officials				
	NOTICE OF: (See also CONDUCT OF HEARING)				
	1. Specification of tests, instruments or reports on which proposed placement is based				
	2. Review and appeal procedures:				
	3. Names of:				
	4. ~~Statement of~~ Right to:				
	a. Independent evaluation				
	b. Inspect and copy relevant records		X		
	c. Compel attendance at hearing of witnesses		X		
	5. Exact time and place of hearing				
	OTHER:				
HEARING	BEFORE: 1. INITIAL APPEAL. Superintendent of intermediate or constituent district, or designee. 2. SUBSEQUENT APPEAL. Superintendent of Public Instruction, or designee, independent of subject school districts.		X		X
	WHEN: 15-30 days following receipt of request. Reasonable extension granted upon request, for good cause shown.		X		X
	CONDUCT OF HEARING:				
	1. Fair and Impartial				
	2. Closed, ~~unless open hearing is requested by~~: if parent requests		X		
	3. Right of				
	a. Compel attendance of witnesses				
	b. Representation by: person of parent's choosing		X		
	c. Present evidence and testimony including expert testimony		X		
	d. Confront and cross-examine adverse witnesses				
	e. Interpreters for deaf and/or fluent in primary language of home				
	f. Attendance by minor child at option of parent				
	4. Burden of proof on:				
	5. Record of hearing: Shall be made available to parent. Any cost beyond original transcription shall be paid by requesting party. Discarded after 3 years.		X		
	SCOPE OF REVIEW: INITIAL				
	DECISION FOLLOWING HEARING:				
	1. Scope: Determination of educational placement or status.		X		
	a. Includes: Findings of fact and conclusions of law		X		
	b. Based solely on evidence and testimony presented at hearing		X		
	2. Form: Writing. Sent by certified mail.	X			
	3. Statement of rights sent with decision:				
	4. Other: Not later than 20 days after hearing		X		

OTHER DUE PROCESS PROVISIONS: A temporary change in educational status of the handicapped person may be made for the period prior to the decision of the hearing officer upon written request to the Superintendent of Public Instruction by the Superintendent of the intermediate school district or constituent district. The Superintendent of Public Instruction shall take action in writing within 5 days of his receipt of the request setting forth reasons therefor and upon notice to the parent.

Footnotes: Should be knowledgeable and impartial. Department of Education will circulate list of 25 trained special education hearing officers who may be appointed.

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART I: REFERRAL, EVALUATION AND PLACEMENT.

STATE: Minnesota

ADMINISTRATIVE PROVISION: Regulations to insure that Handicapped Children and their Parents or Guardians are Guaranteed Procedures and Substantive Safeguards in Decisions regarding Identification, Assessment and Educational Placement of Handicapped Children (Draft #12, Dec. 1975)

DUE PROCESS PROVISIONS		CITATION §	REFERRAL	EVALUATION	PLACEMENT	OTHER
NOTICE to parent or guardian	I. OF: Evaluation (assessment) A. Proposed assessment. WHEN: Prior to action.	III.7.		X		
	B. Information re assessment, when parent has refused to permit assessment. FORM: Certified mail, so long as provision is made for non-readers, and non-English speakers. WHEN: Prior to action.	VI.2.b. ii.		X		
	II. OF: Placement (services) A. Proposed placement, transfer from or to denial of placement in special education program. WHEN: Prior to action. FORM: Certified mail, so long as provision is made for non-readers and non-English speakers.	VI.2.b.i VI2.b.ii			X X	
	B. Where child's primary placement is regular education: proposed special instruction services. WHEN: Prior to action.	III. OF: Conciliation conference				X
	ITEMS ON NOTICE:					
	1. Request parent: To attend conciliation conference.					X
	2. Description of: a. Proposed ~~or requested action, or decision~~ assessment; placement, transfer or denial of placement; special instruction.			A	A,B	
	b. Reasons for action or decision: Proposed assessment; proposed placement, etc.; proposed special education.			A,B	A,B	
	3. Names of persons responsible for: Conducting proposed assessment; conducting tests, etc. on completed assessment or making recommendation for placement.			B	A	
	4. Specification of tests, instruments or reports: - procedures for proposed assessment; tests, etc. on which proposed placement is based.			B	A	
	5. When action involves placement or denial of placement: a. Description of alternative educational placements				A	
	b. Reasons why such alternative placements are not appropriate for child				A	
	6. Statement that parents will be informed of results of: Assessment.			B		
	7. Statement of opportunity/right to: a. Obtain independent evaluation				A	
	(1) At expense of: Parent				A	
	(2) Names, addresses and telephone numbers of public agencies offering free evaluation				A	
	b. Meet and consult with school personnel concerning: Assessment, if parent refuses to permit it; placement, if parent objects to it; special services			B	A,B	
	c. Participate in committee meetings regarding:					
	(1) Right to representation by:					
	8. Statement of right to: a. Refuse to consent to: Assessment; Placement; Services.			B	A,B	
	(1) However, LEA can request hearing to try to obtain approval if, after conference with parent, parent still refuses permission for assessment.			B		
	b. Inspect and copy relevant student records, especially re assessment; also prior to hearing.			B	A	
	c. Appeal					
	d. Due process hearing, if parent objects to action - placement				A	
	9. Description of: proposed assessment; proposed placement[1] - written a. Procedures for objecting to ~~action or appealing decision~~ objection within 7 days after notice and later request for hearing			B	A,B	
	b. Procedural rights at due process hearing: Notice must be sufficient to support a decision at hearing to sustain proposed placement. Right to: Record of hearing, counsel, present evidence, cross-examine and compel attendance of school witnesses.				A	
	c. Procedures for appealing decision resulting from due process hearing				A	
	10. List of community agencies offering legal counsel for indigents				A	
	11. Declaration that child's educational status will not be changed without consent of parent, ~~or until due process procedures have been exhausted~~			B		
	a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by:					
	12. Other:[1] a. Explanation of how assessment results may be used. b. Copy of educational program plan. official. c. Right to interpretation of evaluation results, procedures from school d. Right to discuss proposed action with school officials.			a,B	a.AB b.AB c.A d.B	
CONSULTATION with parent or guardian	I. RE: Student's progress, including reports of tests, evaluations, etc.[2]	III.6.		X		
	II. RE: Team meeting to determine need for special education instruction. Participation not mandatory but parent must be invited to attend.	V.4.a.		X	X	
	III. RE: Placement - conciliation conference (See next page under NOTICE).	VI.2.b.i, ii.				
CONSENT by parent or guardian	I. TO: Assessment[3]; When: Prior to 10th day after receipt of notice of assessment.	III.7.		X		
	II. TO: Placement[3]; When: Prior to 10th day after receipt of notice of placement.	III.7.			X	
OTHER AREAS of parental involvement or rights	If parent informs district in writing (prior to 10th day after receipt of notice of assessment and placement) that they do not agree with the proposed action, the child shall remain in current placement until all necessary proceedings have been completed.	III.7.				X

Footnotes: [1] See next page for elaboration of contents of notice. [2] Parents are not provided notice of this right. [3] See above under NOTICE.

NOTICE

ITEMS ON NOTICE: (Continued)

With respect to both notices of placement (indicated on p.1 under OF - II.A., II.B), the Regulations also require notice of the following points:

1. The responsible school district may proceed with the proposed action unless the parent or eligible child objects in writing to the proposed action within 7 days after service of the notice.

2. The manner in which to object to the proposed action.

3. If the parent or eligible child objects to the proposed action, an individual conciliation conference shall be held in a specified manner and time.

4. If the parent or eligible child fails to appear at and attend the conciliation conference unless waived under specified procedures, the responsible school district may proceed with the proposed action.

5. If the parent or eligible child still objects to the proposed action after the final conciliation conference,or waiver thereof, a second notice specifying the additional rights and procedures available to the parent or eligible child, and providing additional information concerning the proposed action,will be served on the parent or eligible child, including right to object to the proposed action at a hearing before an impartial hearing officer and the manner and time in which to do so.

6. If no such objection is made, the proposed action may take place.

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART II: APPEAL.

STATE: Minnesota

ADMINISTRATIVE PROVISION: Regulations to insure the Handicapped Children and their Parents or Guardians are Guaranteed Procedures and Substantive Safeguards in Decisions regarding Identification, Assessment and Educational Placement of Handicapped Children (Draft #12, Dec. 1975)

STAGES OF APPEAL		CITATION
INITIAL APPEAL	REGULATORY CATEGORY: Hearing initiated by: A. Parent objecting to: (1) Proposed education placement, transfer to and from, or denial of placement in special education program, or (2) Proposed educational program or services supplementing regular education placement. B. School, to compel assessment where: (1) parents refuse to give permission for assessment or (2) parents fail to respond to school's reasonable attempts to obtain written permission. PROCEDURE: Hearing (See below).	VI.4.a. b.e.iii
SUBSEQUENT APPEAL	I. OF: Decision of hearing officer. WHEN: Within 15 days of receipt of decision. PROCEDURE: In accordance with Minnesota Administrative Procedures Act. II. If school fails to implement hearing officer's decision, parent has right (under Minn. Stat. 124.15) to appeal such failure. TO: State Board of Education. PROCEDURE: State Board of Education may provide relief or impose sanctions necessary to correct failure. (Minn. Stat. 124.15)	VI.4.h.
JUDICIAL REVIEW		

DUE PROCESS PROVISIONS		INITIAL APPEAL NOTICE	INITIAL APPEAL PROCEDURE	SUBSEQUENT APPEAL NOTICE	SUBSEQUENT APPEAL PROCEDURE
PRE-HEARING [1]	PRE-HEARING CONFERENCE with school officials: Personal conferences and conciliation conference - see PART I.		X		
	NOTICE OF: (See also CONDUCT OF HEARING) 1. Specification of tests, instruments or reports on which proposed placement is based				
	2. Review and appeal procedures:				
	3. Names of:				
	4. Statement of right to: a. Independent evaluation				
	b. Inspect and copy relevant records	X			
	c. Compel attendance at hearing of witnesses				
	5. Exact time and place of hearing given at least 10 days in advance	X			
	OTHER: Prehearing review by hearing officer. (Continued)		X		
HEARING	BEFORE: (1) Hearing officer mutually agreed upon by school and parent, and paid for by school district. If such agreement cannot be reached, the Commissioner of Ed. shall appoint hearing officer. (2) Hearing officer shall be impartial and informed.		X		
	WHEN: 15 - 30 days after recipt of request for hearing.				
	CONDUCT OF HEARING: 1. Fair and Impartial				
	2. Closed, unless open hearing is requested by: Parent		X		
	3. Right of Request a. Compel attendance of witnesses		X		
	b. Representation by: Including legal counsel		X		
	c. Present evidence and testimony including expert testimony. To be admissible, evidence must be reliable, trustworthy, competent, material		X		
	d. Confront and cross-examine adverse witnesses and have probative value.		X		
	e. Interpreters for deaf and/or fluent in primary language of home				
	f. Attendance by minor child at option of parent				
	4. Burden of proof on: School as to all facts and grounds for proposed action. (Continued)		X		
	5. Record of hearing: Shall be made available to parent upon request		X		
	SCOPE OF REVIEW: Presumption that placement in regular classroom with special instruction "preferable" to removal from regular classroom.		X		
	DECISION FOLLOWING HEARING: 1. Scope: Includes determination of whether school sufficiently considered alternative programs.		X		
	a. Includes: Findings of fact and conclusion of law.		X		
	b. Based solely on evidence and testimony presented at hearing - sustained by clear and convincing evidence.		X		
	2. Form: Sent by registered mail to parent. Filed with Dept. of Education	X			
	3. Statement of rights sent with decision: Binding unless appealed	X			
	4. Other: Within 7 days after hearing.		X		
OTHER DUE PROCESS PROVISIONS					

Footnotes [1] Unless otherwise specified, the information under this category applies to all hearings, regardless of whether initiated by parent or by school.

DUE PROCESS PROVISIONS

PREHEARING

OTHER (Continued):

(1) 5 working days prior to the hearing, the hearing officer shall recieve copies of (a) the school district's notice and memorandum to the parents; (b) written information concerning the educational assessment and copies of any tests, evaluations, diagnosis, or reports relating to assessment or the proposed action; (c) a copy of the school district's educational program plan; and (d) such other information from the school district as the hearing officer may have requested at a prior date.

(2) Upon receipt of this infomration, the hearing officer may review the same for compliance with these guidelines. The hearing officer has discretion to: (a) meet with the parties prior to the hearing; (b) request the responsible school district to perform a further educational assessment or resassessment; (c) propose an additional educational program and plan; (d) send additional notice to parents or eligible child; or (d) such additional things necessary to achieve compliance with these guidelines. The hearing officer (e) may postpone the hearing for up to 14 working days.

HEARING

CONDUCT OF HEARING:

4. Burden of Proof (Continued):

In hearing initiated by school district where 1. parent refused to give consent, burden of proof is on the responsible school district to demonstrate that there are facts, relating to the child's performance in his or her present educational placement, which indicate reasonable grounds to believe that the educational assessment procedures are justified, as the first step toward a possible change in the child's educational placement or in modification of the child's educational program which will provide an educational program appropriately suited to the child's needs; 2. parent failed to respond to school district's attempts to obtain consent for assessment, the burden of proof is on the school district to demonstrate by documentation that it has repeatedly attempted to contact the parents, utilizing efforts that were reasonably calculated to succeed.

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART I: REFERRAL, EVALUATION AND PLACEMENT.

STATE: Montana	ADMINISTRATIVE PROVISION: Special Education Rules and Regulations Reference Manual (Aug. 1975)	CITATION	REFERRAL	EVALUATION	PLACEMENT	OTHER
DUE PROCESS PROVISIONS						
NOTICE to parent or guardian	OF: I. Change in child's educational process from regular student to individual receiving special education services. FORM: Writing. WHEN: Prior to placement.	$Y.1			X	
	II. Right to appeal decision re this change. FORM: Writing. WHEN: Prior to placement.	4 4.1			X	
	ITEMS ON NOTICE:					
	1. Request parent:					
	2. Description of: a. Proposed or requested action, or decision: Change to special education services				I	
	b. Reasons for action or decision					
	3. Names of persons responsible for:					
	4. Specification of tests, instruments or reports:					
	5. When action involves placement or denial of placement: a. Description of alternative educational placements					
	b. Reasons why such alternative placements are not appropriate for child					
	6. Statement that parents will be informed of results of:					
	7. Statement of opportunity/right to: a. Obtain Independent evaluation					
	(1) At expense of:					
	(2) Names, addresses and telephone numbers of public agencies offering free evaluation					
	b. Meet and consult with school personnel concerning:					
	c. Participate in committee meetings regarding:					
	(1) Right to representation by:					
	8. Statement of right to: a. Refuse to consent to:					
	(1) However, LEA can request hearing to try to obtain approval					
	b. Inspect and copy relevant student records					
	c. Appeal				II	
	d. Due process hearing, if parent objects to action					
	9. Description of: a. Procedures for objecting to action or appealing decision				II	
	b. Procedural rights at due process hearing:					
	c. Procedures for appealing decision resulting from due process hearing					
	10. List of community agencies offering legal counsel for indigents					
	11. Declaration that child's educational status will not be changed without consent of parent, or until due process procedures have been exhausted					
	a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by:					
	12. Other: Child, as well as parent/guardian, should be informed of and understand education change, if child is capable.				I,II	
CONSULTATION with parent or guardian	RE: Inspection and interpretation of child's school records, including test profiles. WHEN: Within a reasonable time after parent's request.[1]	$4.3				
CONSENT by parent or guardian	I. TO: Use of standardized individual intelligence or personality tests.[1] WHEN: Prior to tests. FORM: Written	$4.2		X		
	II. TO: Placement in special education program[2] WHEN: Prior to placement FORM: Written	$4.1			X	
OTHER AREAS of parental involvement or rights	III. TO: Individual program involving use of aversive stimuli.[1] (e.g. Shock) FORM: Written. WHEN: Prior to use.	$4.7			X	
	Right to independent evaluation on request of parent at expense of school districts subject to advance approval from State Superintendent of Public Instruction.[1]	$4.5				X
Footnotes	1 Parents are not provided notice of this right. 2 However, school may place child without such consent provided parents are notified of appeal procedure. See above under NOTICE.					

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART II: APPEAL.

STATE: Montana ADMINISTRATIVE PROVISION: Special Education Rules and Regulations Reference Manual (Aug. 1975)

STAGES OF APPEAL		CITATION
INITIAL APPEAL	REGULATORY CATEGORY: Appeal of school decision re placement of child in special education program. PROCEDURE: As specified in Montana Revised Code §75-5811, which provides for a hearing before and decision by the county superintendent regarding all matters of controversy resulting from decisions of the trustees of the district of the county.	§4.1
SUBSEQUENT APPEAL		
JUDICIAL REVIEW		

DUE PROCESS PROVISIONS		INITIAL APPEAL		SUBSEQUENT APPEAL	
		NOTICE	PROCEDURE	NOTICE	PROCEDURE
PRE-HEARING	PRE-HEARING CONFERENCE with school officials				
	NOTICE OF: (See also CONDUCT OF HEARING)				
	1. Specification of tests, instruments or reports on which proposed placement is based				
	2. Review and appeal procedures:				
	3. Names of:				
	4. Statement of right to:				
	a. Independent evaluation				
	b. Inspect and copy relevant records				
	c. Compel attendance at hearing of witnesses				
	5. Exact time and place of hearing				
	OTHER:				
HEARING	BEFORE: County superintendent		X		
	WHEN:				
	CONDUCT OF HEARING:				
	1. Fair and Impartial				
	2. Closed, unless open hearing is requested by:				
	3. Right of				
	a. Compel attendance of witnesses				
	b. Representation by:				
	c. Present evidence and testimony		X		
	d. Confront and cross-examine adverse witnesses				
	e. Interpreters for deaf and/or fluent in primary language of home				
	f. Attendance by minor child at option of parent				
	4. Burden of proof on:				
	5. Record of hearing: Written transcript shall be prepared		X		
	SCOPE OF REVIEW:				
	DECISION FOLLOWING HEARING:				
	1. Scope:				
	a. Includes:				
	b. Based solely on ~~evidence and testimony presented~~ facts established at hearing		X		
	2. Form:				
	3. Statement of rights sent with decision:				
	4. Other:				
OTHER DUE PROCESS PROVISIONS					

Footnotes

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART I: REFERRAL, EVALUATION AND PLACEMENT.

STATE: Nebraska	ADMINISTRATIVE PROVISION: Rule 51 - State Department of Education Rule on Development of Reimbursable Local Special Education Programs for Handicapped Children. (Approved by State Board of Education April, 1975).	CITATION §	REFERRAL	EVALUATION	PLACEMENT	OTHER
DUE PROCESS PROVISIONS						
NOTICE to parent or guardian	OF: Placement A. Proposed initial placement in special education program or supportive service. WHEN: Prior to placement. FORM: Letter.	51-(5) (b)(i)			X	
	B. Continued, modified or terminated placement in special education program. WHEN: After annual review.	51-(5) (c)(ii)			X	
	C. Denial of placement in special education program. WHEN: Promptly. FORM: Writing.	51-(6Ia) (ii)			X	
	ITEMS ON NOTICE: 1. Request parent:					
	2. Description of: a. Proposed or requested action, or decision: Proposed initial placement; continued, modified or terminated placement; denial of placement.				A,B, C.	
	b. Reasons for action or decision					
	3. Names of persons responsible for:					
	4. Specification of tests, instruments or reports:					
	5. When action involves placement or denial of placement: a. Description of alternative educational placements					
	b. Reasons why such alternative placements are not appropriate for child					
	6. Statement that parents will be informed of results of:					
	7. Statement of opportunity/right to: a. Obtain independent evaluation (1) At expense of:					
	(2) Names, addresses and telephone numbers of public agencies offering free evaluation					
	b. Meet and consult with school personnel concerning:					
	c. Participate in committee meetings regarding:					
	(1) Right to representation by:					
	8. Statement of right to: a. Refuse to consent to:					
	(1) However, LEA can request hearing to try to obtain approval					
	b. Inspect and copy relevant student records					
	c. Appeal Review of denial of placement				C	
	d. Due process hearing, if parent objects to action					
	9. Description of: a. Procedures for objecting to action or appealing decision denying placement				C	
	b. Procedural rights at due process hearing:					
	c. Procedures for appealing decision resulting from due process hearing					
	10. List of community agencies offering legal counsel for indigents					
	11. Declaration that child's educational status will not be changed without consent of parent, or until due process procedures have been exhausted a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by:					
	12. Other:					
CONSULTATION with parent or guardian	RE: Placement in special education program.[1] WHEN: Prior to placement.	51-(5) (a)(i)(A)			X	
CONSENT by parent or guardian	I. TO: Referral for professional diagnosis. FORM: Written.[1]	51-(4) (a)	X			
	II. TO: Placement in special program or service.[2] WHEN: Prior to placement.	51-(5)(b) (ii)			X	
OTHER AREAS of parental involvement or rights						
Footnotes	[1] Parents are not provided notice of this right. [2] See above under NOTICE.					

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART II: APPEAL.

STATE: Nebraska — ADMINISTRATIVE PROVISION: Rule 51 - State Department of Education Rule on Development of Programs for Handicapped Children (Approved by State Board of Education, April, 1975)

STAGES OF APPEAL		CITATION §
INITIAL APPEAL	REGULATORY CATEGORY: Right to review the educational placement of a handicapped child: (1) for whom the school has recommended special education placement, (2) declared ineligible for special education services, (3) whose needs have been identified outside the educational system, (4) whose parent or guardian believes that the child requires special education services, or (5) who is assigned to a special education program when the child is not handicapped. PROCEDURE: Conference. (See below)	51-(6) (a) (b)
SUBSEQUENT APPEAL	OF: Decision of local review conference. TO: State Department of Education. PROCEDURE: State Department of Education shall designate one of its employees as a special reviewing officer. Reviewing officer shall examine the placement based upon a study of the transcript of conference and may request (a) further information, either by oral testimony or in writing or (b) technical assistance. WHEN: Within 10 calendar days of receipt of the transcript. DECISION: Report of the review shall be submitted to Commissioner of Education. who, with the State Board of Education, shall decide matter within 40 calendar days of date that transcript is received. The State Department of Education may dismiss any review deemed lacking in substance.	51-(6) (c)
JUDICIAL REVIEW		

DUE PROCESS PROVISIONS		INITIAL APPEAL NOTICE	INITIAL APPEAL PROCEDURE	SUBSEQUENT APPEAL NOTICE	SUBSEQUENT APPEAL PROCEDURE
PRE-HEARING	PRE-HEARING CONFERENCE with school officials				
	NOTICE OF: (See also CONDUCT OF HEARING)				
	1. Specification of tests, instruments or reports on which proposed placement is based				
	2. Review and appeal procedures:				
	3. Names of:				
	4. Statement of Right to:				
	a. Independent evaluation and right to have report of it presented as evidence in proceedings		X		
	b. Inspect and copy relevant records		X		
	c. Compel attendance at hearing of witnesses				
	5. Exact time and place of hearing - at least 5 calendar days' notice	X			
	OTHER:				
HEARING	BEFORE: Conference between parent and representative and designated school district personnel.		X		
	WHEN:				
	CONDUCT OF HEARING:				
	1. Fair and Impartial				
	2. Closed, unless open hearing is requested by:				
	3. Right of				
	a. Compel attendance of witnesses				
	b. Representation by:				
	c. Present evidence and testimony		X		
	d. Confront and cross-examine adverse witnesses		X		
	e. Interpreters for deaf and/or fluent in primary language of home		X		
	f. Attendance by minor child at option of parent				
	4. Burden of proof on:				
	5. Record of hearing: Right to receive transcript. Must be signed by parent and school.		X		
	SCOPE OF REVIEW:				
	DECISION FOLLOWING HEARING:				
	1. Scope: Recommend affirmance of placement decision, a denial of the request for change in placement, or alternative procedures to meet		X		
	a. Includes: the educational needs of the child, which may include further evaluation.				
	b. Based solely on evidence and testimony presented at hearing				
	2. Form: Certified mail to parent within 2 weeks	X			
	3. Statement of rights sent with decision: Review by State Education Department	X			
	4. Other:				
OTHER DUE PROCESS PROVISIONS	No change in program assignment or status of handicapped child shall be made within period afforded parent to request further hearing except that such change may be made with the written consent of parent. If health or safety of child or other persons would be endangered by delaying change in assignment, change may be made but without prejudice to any rights that child and his parent or guardian may have pursuant to law. §51-(6)(a)(b)				
Footnotes					

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART I: REFERRAL, EVALUATION AND PLACEMENT.

STATE: Nevada	ADMINISTRATIVE PROVISION: Standards and Instructions for Administration of Exceptional Pupil Education Programs (Nov., 1973)	CITATION "Due Process Standards"	REFFRAL	EVALUATION	PLACEMENT	OTHER
DUE PROCESS PROVISIONS						
NOTICE to parent or guardian	OF: Right to request and obtain a fair and impartial hearing on proposed placement or non-placement.	#1			X	
	ITEMS ON NOTICE:					
	1. Request parent:					
	2. Description of:					
	a. Proposed or requested action, or decision:					
	b. Reasons for action or decision					
	3. Names of persons responsible for:					
	4. Specification of tests, instruments or reports:					
	5. When action involves placement or denial of placement:					
	a. Description of alternative educational placements					
	b. Reasons why such alternative placements are not appropriate for child					
	6. Statement that parents will be informed of results of:					
	7. Statement of opportunity/right to:					
	a. Obtain independent evaluation					
	(1) At expense of:					
	(2) Names, addresses and telephone numbers of public agencies offering free evaluation					
	b. Meet and consult with school personnel concerning:					
	c. Participate in committee meetings regarding:					
	(1) Right to representation by:					
	8. Statement of right to:					
	a. Refuse to consent to:					
	(1) However, LEA can request hearing to try to obtain approval					
	b. Inspect and copy relevant student records					
	c. Appeal					
	d. Due process hearing, if parent objects to action re placement				X	
	9. Description of:					
	a. Procedures for objecting to action or appealing decision					
	b. Procedural rights at due process hearing:					
	c. Procedures for appealing decision resulting from due process hearing					
	10. List of community agencies offering legal counsel for indigents					
	11. Declaration that child's educational status will not be changed without consent of parent, or until due process procedures have been exhausted					
	a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by:					
	12. Other:					
CONSULTATION with parent or guardian						
CONSENT by parent or guardian						
OTHER AREAS of parental involvement or rights						
Footnotes						

STATE : Nevada — ADMINISTRATIVE PROVISION: Standards and Instructions for Administration of Exceptional Pupil Education Programs (Nov., 1973)

STAGES OF APPEAL		CITATION
INITIAL APPEAL	REGULATORY CATEGORY: Right to fair and impartial hearing on proposed placement or non-placement in handicapped education.	"Due Process Standards" #2-7
SUBSEQUENT APPEAL		
JUDICIAL REVIEW		

DUE PROCESS PROVISIONS		INITIAL APPEAL		SUBSEQUENT APPEAL	
		NOTICE	PROCEDURE	NOTICE	PROCEDURE
PRE-HEARING	PRE-HEARING CONFERENCE with school officials				
	NOTICE OF: (See also CONDUCT OF HEARING)				
	1. Specification of tests, instruments or reports on which proposed placement is based				
	2. Review and appeal procedures:				
	3. ~~Names of:~~ Reasons for placement decision	X			
	4. Statement of right to:				
	a. Independent evaluation				
	b. Inspect and copy relevant records	X			
	c. Compel attendance at hearing of witnesses				
	5. Exact time ~~and place~~ of hearing	X			
	OTHER: Notice by certified mail, within 30 days of receipt of request for hearing	X			
HEARING	BEFORE: Hearing officer appointed by State Superintendent of Instruction. However, local school district pays expenses of hearing officer.		X		
	WHEN: No sooner than 20 days from date of mailing notice of hearing (unless both parties waive this period)		X		
	CONDUCT OF HEARING:				
	1. Fair and impartial				
	2. Closed, unless open hearing is requested by :				
	3. Right of				
	a. Compel attendance of witnesses				
	b. Representation by: counsel	X	X		
	c. Present evidence and testimony	X	X		
	d. Confront and cross-examine adverse witnesses	X	X		
	e. Interpreters for deaf and/or fluent in primary language of home				
	f. Attendance by minor child at option of parent				
	4. Burden of ~~proof on~~: persuasion as to reasons for recommended placement or non-placement on school district		X		
	5. Record of hearing:				
	SCOPE OF REVIEW:				
	DECISION FOLLOWING HEARING:				
	1. Scope:				
	a. Includes:				
	b. Based solely on evidence and testimony presented at hearing		X		
	2. Form: Written		X		
	3. Statement of rights sent with decision:				
	4. Other: Must be rendered within 10 days of hearing		X		
OTHER DUE PROCESS PROVISIONS					

Footnotes

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART I: REFERRAL, EVALUATION AND PLACEMENT.

STATE: New Hampshire	ADMINISTRATIVE PROVISION: Amendment to State Plan under Part B. EHA Administrative Hearing Procedures. New Hampshire State Dept. of Ed., July 16, '75	CITATION	REFERRAL	EVALUATION	PLACEMENT	OTHER
DUE PROCESS PROVISIONS						
NOTICE to parent or guardian	CF: I. Local or State Ed. Agency proposing to change ed. placement of child. WHEN: Prior to change. FORM: Written notice in English and primary language of the school.	2.30 2.10b			X	
	II. Change proposed in child's educational program(resulting from periodic reviews). WHEN: Prior to proposed action. FORM: Written.	2.31		X		
	III. Parent's request for different placement for child denied. WHEN: Prior to proposed action. FORM: Written.	2.32	X			
	ITEMS ON NOTICE:					
	1. Request parent:					
	2. Description of:					
	a. Proposed or requested action, or decision:		X	X	X	
	b. Reasons for action or decision		X	X	X	
	3. Names of persons responsible for:					
	4. Specification of tests, instruments or reports:					
	5. When action involves placement or denial of placement:					
	a. Description of alternative educational placements					
	b. Reasons why such alternative placements are not appropriate for child					
	6. Statement that parents will be informed of results of:					
	7. Statement of opportunity/right to:					
	a. Obtain independent evaluation		X	X	X	
	(1) At expense of:					
	(2) Names, addresses and telephone numbers of public agencies offering free evaluation					
	b. Meet and consult with school personnel concerning:					
	c. Participate in committee meetings regarding:					
	(1) Right to representation by:					
	8. Statement of right to:					
	a. Refuse to consent to:					
	(1) However, LEA can request hearing to try to obtain approval					
	b. Inspect and copy relevant student records --at reasonable cost.		X	X	X	
	c. Appeal		X	X	X	
	d. Due process hearing, if parent objects to action		X	X	X	
	9. Description of:					
	a. Procedures for objecting to action or appealing decision					
	b. Procedural rights at due process hearing:		X	X	X	
	c. Procedures for appealing decision resulting from due process hearing					
	10. List of community agencies offering legal counsel for indigents					
	11. Declaration that child's educational status will not be changed without consent of parent, or until due process procedures have been exhausted					
	a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by:					
	12. Other:					
CONSULTATION with parent or guardian						
CONSENT by parent or guardian	When preschool or school age child is in need of special education services and such child becomes subject of individual evaluation procedures (testing or assessment). WHEN: Prior to testing. FORM: Written.					
OTHER AREAS of parental involvement or rights						
Footnotes						

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART II: APPEAL.

STATE: New Hampshire ADMINISTRATIVE PROVISION: Amendment to State Plan under Part B. EHA Administrative Hearing Procedures. NH State Dept of Ed., July 16, 1975.

STAGES OF APPEAL		CITATION
INITIAL APPEAL	REGULATORY CATEGORY: Appeal to the State Board shall be in writing and filed with the Commissioner of Education. Available to parents or guardians of all students including students for whom the school has recommended special education placement, students who have been declared ineligible for special education programs, students whose parents believe they require special education programs. Request for hearing to School Board in District where child resides. Hearing shall occur no later than 30 calendar days after the request.	2.41
SUBSEQUENT APPEAL	OF: Decision of School Board. TO: State Board of Education. REQUEST: For State Board of Education hearing must be in writing to Commissioner of Education within 10 school days of receipt decision. EXTENSION: Of time to appeal may be extended to 30 days.	2.43
JUDICIAL REVIEW	Administrative Procedures for Appeal.	

DUE PROCESS PROVISIONS		INITIAL APPEAL NOTICE	INITIAL APPEAL PROCEDURE	SUBSEQUENT APPEAL NOTICE	SUBSEQUENT APPEAL PROCEDURE
PRE-HEARING	PRE-HEARING CONFERENCE with school officials				
	NOTICE OF: (See also CONDUCT OF HEARING)				
	1. Specification of tests, instruments or reports on which proposed placement is based				
	2. Review and appeal procedures:				
	3. Names of:				
	4. Statement of right to:				
	a. Independent evaluation				
	b. Inspect and copy relevant records				
	c. Compel attendance at hearing of witnesses				
	5. Exact time and place of hearing				
	OTHER:				
HEARING	BEFORE: State Board of Education	X	X	X	X
	WHEN: No later than 30 days after request.	X	X		
	CONDUCT OF HEARING:				
	1. Fair and impartial		X		
	2. Closed, unless open hearing is requested by: parents.		X		X
	3. Right of both parties				
	a. Compel attendance of witnesses		X		X
	b. Representation by: counsel or other professional person.		X		X
	c. Present evidence and testimony		X		X
	d. Confront and cross-examine adverse witnesses		X		X
	e. Interpreters for deaf and/or fluent in primary language of home		X		X
	f. Attendance by minor child at option of parent		X		X
	4. Burden of proof on:				
	5. Record of hearing: On tape or other appropriate means. Summaries available at reasonable cost to parents, schools.		X		X
	SCOPE OF REVIEW: Of State Board of Education--to confirm, modify, reject or recommend alternative special education programs for child.				X
	DECISION FOLLOWING HEARING:				
	1. Scope: INITIAL HEARING: (a) whether child has needs which require special ed., (b) whether evaluation procedures are appropriate, (c) that diagnostic profile of child is verified, (d) that proposed placement directly related to child's emotional needs.				
	a. Based solely on evidence and testimony presented at hearing		X		X
	2. Form: Written to parents and LEA and respective representatives		X		X
	3. Statement of rights sent with decision:		X		X
	4. Other: (a) Initial decision communicated within 10 calendar days of hearing; (b) ~~appeal board decision communicated within 15 days.~~		X		X
OTHER DUE PROCESS PROVISIONS	Steps taken to assure that child will remain in his/her present educational placement until State Board of Ed. enters a decision (except in emergency situations).				

Footnotes

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART I: REFERRAL, EVALUATION AND PLACEMENT.

STATE: New Jersey	ADMINISTRATIVE PROVISION: Special Education Rules and Regulations (Aug. 6, 1975)	CITATION	REFERRAL	EVALUATION	PLACEMENT	OTHER
DUE PROCESS PROVISIONS		§6:28				
NOTICE to parent or guardian	I. OF: Referral for evaluation. FORM: Written, in dominant language of home. II. OF: Evaluation. III. OF: Recommended: Classification, education plan and program. FORM: Writing in dominant language of home, and conference. IV. OF: School's responsibility to recommend and reclassify after one year, upon request of parent. FORM: Written. WHEN: At time of original classification.	-1.9(c) -1.9(d) -1.9(e) -2.3(d)	X	X	X	X
	ITEMS ON NOTICE:					
	1. Request parent: To provide information to school study team to be used in evaluation			X		
	2. Description of:					
	a. Proposed or requested action, or decision: Referral		X			
	b. Reasons for action or decision: Referral		X			
	3. Names of persons responsible for:					
	4. Specification of tests, instruments or reports:					
	5. When action involves placement or denial of placement:					
	a. Description of alternative educational placements					
	b. Reasons why such alternative placements are not appropriate for child					
	6. Statement that parents will be informed of results of:					
	7. Statement of opportunity/right to:					
	a. Obtain Independent evaluation					
	(1) At expense of:					
	(2) Names, addresses and telephone numbers of public agencies offering free evaluation					
	b. Meet and consult with school personnel concerning:					
	c. Participate in committee meetings regarding:					
	(1) Right to representation by:					
	8. Statement of right to:					
	a. Refuse to consent to:					
	(1) However, LEA can request hearing to try to obtain approval					
	b. Inspect and copy relevant student records					
	c. ~~Appeal~~ Challenge referral		X			
	d. Due process hearing, if parent objects to action and/or administrative review process (mediation) to dispute classification, ed. plan and ed. program.				X	
	9. Description of:					
	a. Procedures for objecting to action or appealing decision: Referral; classification, ed. plan, and ed. program (procedures include mediation and hearing)		X		X	
	b. Procedural rights at due process hearing:					
	c. Procedures for appealing decision resulting from due process hearing					
	10. List of community agencies offering legal counsel for indigents					
	11. Declaration that child's educational status will not be changed without consent of parent, or until due process procedures have been exhausted					
	a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by:					
	12. Other: a. Copies of the law and the regulations relating to the handicapped. b. Procedures to seek redress for any issue. §6:28-1.10(b)					X
CONSULTATION with parent or guardian	RE: Notice of classification, educational plan, program, and right to administrative review process (mediation) or hearing.[1]	§6:28-1.9(e),(f)			X	
CONSENT by parent or guardian						
OTHER AREAS of parental involvement or rights	Parents who challenge the findings of the child study team have the right to request an independent educational evaluation of their child from the Branch of Special Education and Pupil Personnel Services, State Department of Education. The Department of Education shall provide, without cost to parent, all necessary professional evaluation services for this purpose.	§6:28-1.10(c)				X

Footnotes

[1] See above under NOTICE.

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART II: APPEAL.

STATE: New Jersey — ADMINISTRATIVE PROVISION: Special Education Rules and Regulations (Aug. 6, 1975)

STAGES OF APPEAL		CITATION §
INITIAL APPEAL	REGULATORY CATEGORY: Administrative review and hearing where parents' request (1) that their child be classified, (2) have his or her classification changed, or (3) have his or her program or placement changed, is denied. PROCEDURES: 1. Informal conference between parents and specified others, 2. Opportunity for parent to meet with local board of education, 3. Consultation with and review by special services personnel of office of the county superintendent and regional child study teams, or with the Branch of Special Education and Pupil Personnel Services, State Department of Education. 4. A hearing shall be made available upon request to the local board of education within 10 days of notification of recommendation.	6:28-1.11
SUBSEQUENT APPEAL	I. OF: Decision of hearing examiner. TO: Commissioner of Education. II. OF: Decision of Commissioner of Education. TO: State Board of Education. OF: Decision of State Board of Education TO: New Jersey Superior Court, Appellate Division	6:28-1.11
JUDICIAL REVIEW	OF: Decision of State Board of Education. TO: New Jersey Superior Court, Appellate Division.	6:28-1.11

DUE PROCESS PROVISIONS		INITIAL APPEAL NOTICE	INITIAL APPEAL PROCEDURE	SUBSEQUENT APPEAL NOTICE	SUBSEQUENT APPEAL PROCEDURE
PPE-HEARING	PRE-HEARING CONFERENCE with school officials				
	NOTICE OF: (See also CONDUCT OF HEARING) 1. Specification of tests, instruments or reports on which proposed placement is based				
	2. Review and appeal procedures:				
	3. Names of:				
	4. Statement of Right to: a. Independent evaluation				
	b. Inspect and copy relevant records		X		
	c. Compel attendance at hearing of witnesses				
	5. Exact time and place of hearing				
	OTHER:				
HEARING	BEFORE: Impartial hearing examiner		X		
	WHEN: Time and place convenient to parties		X		
	CONDUCT OF HEARING: 1. Fair and impartial				
	2. Closed, unless open hearing is requested by:				
	3. Right of a. Compel attendance of witnesses				
	b. Representation by: Legal counsel and others		X		
	c. Present evidence and testimony		X		
	d. Confront and cross-examine adverse witnesses		X		
	e. Interpreters for deaf and/or fluent in primary language of home				
	f. Attendance by minor child at option of parent				
	4. Burden of proof on:				
	5. Record of hearing: Right to verbatim record		X		
	SCOPE OF REVIEW:				
	DECISION FOLLOWING HEARING: 1. Scope:				
	a. Includes: de novo consideration of				
	b. Based solely on evidence and testimony presented at hearing		X		
	2. Form: Writing. Copy made available to parents.	X			
	3. Statement of rights sent with decision:				
	4. Other: Decision shall be made promptly. Binding on parties.		X		

OTHER DUE PROCESS PROVISIONS: 1. No stay of this decision, or of any subsequent decision rendered on appeal, shall be granted pending appeal unless appellant demonstrates (a) a likelihood of prevailing on appeal and (b) that implementation will harm child or other child. Application for stay, first to body rendering decision being appealed; if denied, thereafter to body to which appeal is taken. 2. No recommendation for placement or exclusion from placement shall be implemented before hearing is held unless chief school administrator demonstrates w/ clear and convincing proof that failure to effect such implementation will harm child or other children. §6:28-1.11

FOOTNOTES

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART I: REFERRAL, EVALUATION AND PLACEMENT.

STATE: New Mexico	ADMINISTRATIVE PROVISION: A Plan for the Delivery of Special Education Services. State Dept. of Education, January 2, 1977.	CITATION	REFERRAL	EVALUATION	PLACEMENT	OTHER
DUE PROCESS PROVISIONS						
NOTICE to parent or guardian	OF: I. Right to examine all records re: classification and placement of child.	2.1.3				X
	II. Right to independent evaluation of child.	2.1.3				X
	III. Right to impartial due process hearing.	2.1.3				X
	IV. Placement of student or change in special education program and annually when placement is to be continued.	3.3.2			X	
	ITEMS ON NOTICE:					
	1. Request parent:					
	2. Description of:					
	a. Proposed or requested action, or decision:					
	b. Reasons for action or decision					
	3. Names of persons responsible for:					
	4. Specification of tests, instruments or reports:					
	5. When action involves placement or denial of placement:					
	a. Description of alternative educational placements					
	b. Reasons why such alternative placements are not appropriate for child					
	6. Statement that parents will be informed of results of:					
	7. Statement of opportunity/right to:					
	a. Obtain independent evaluation					
	(1) At expense of:					
	(2) Names, addresses and telephone numbers of public agencies offering free evaluation					
	b. Meet and consult with school personnel concerning:					
	c. Participate in committee meetings regarding:					
	(1) Right to representation by:					
	8. Statement of right to:					
	a. Refuse to consent to:					
	(1) However, LEA can request hearing to try to obtain approval					
	b. Inspect and copy relevant student records					
	c. Appeal					
	d. Due process hearing, if parent objects to action					
	9. Description of:					
	a. Procedures for objecting to action or appealing decision					
	b. Procedural rights at due process hearing:					
	c. Procedures for appealing decision resulting from due process hearing					
	10. List of community agencies offering legal counsel for indigents					
	11. Declaration that child's educational status will not be changed without consent of parent, or until due process procedures have been exhausted					
	a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by:					
	12. Other:					
CONSULTATION with parent or guardian	I. Conferences mutually convenient to parents and local education personnel shall be made available prior to placement and parents shall be advised of the evaluation results and committee recommendations. Conferences in terms comprehensible to parents.				X	
CONSENT by parent or guardian	TO: Individualized diagnostic evaluations.					
	WHEN: Prior to evaluations.					
OTHER AREAS of parental involvement or rights						
Footnotes	Parents are not provided notice of right of consultation or consent.					

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART II: APPEAL.

STATE: New Mexico ADMINISTRATIVE PROVISION: A Plan for the Delivery of Special Education Services. State Department of Education, January 2, 1977.

STAGES OF APPEAL		CITATION
INITIAL APPEAL	I. BY: Parents in cases of disagreement with the recommendations of the local authorities regarding evaluation reports and/or program placement recommendations. ON: Written request from the parents. II. BY: Local education agencies where local authorities deem it necessary to ensure appropriate program placement when the nature or severity of the handicap is such that education in the regular program cannot be achieved satisfactorily.	3.4.2 3.4.3
SUBSEQUENT APPEAL		
JUDICIAL REVIEW	Right to appeal decision of hearing authority to the courts or higher administrative authority in accordance with NMSEA regulations.	3.4.2.r

DUE PROCESS PROVISIONS		INITIAL APPEAL NOTICE	INITIAL APPEAL PROCEDURE	SUBSEQUENT APPEAL NOTICE	SUBSEQUENT APPEAL PROCEDURE
PRE-HEARING	PRE-HEARING CONFERENCE with school officials				
	NOTICE OF: (See also CONDUCT OF HEARING)				
	1. Specification of tests, instruments or reports on which proposed placement is based				
	2. Review and appeal procedures:				
	3. Names of:				
	4. Statement of right to:				
	a. Independent evaluation				
	b. Inspect and copy relevant records				
	c. Compel attendance at hearing of witnesses				
	5. Exact time and place of hearing				
	OTHER:				
HEARING	BEFORE: Hearing authority selected by the parents and the local authorities --a mutually satisfactory authority knowledgeable regarding special education regulations.		X		
	WHEN: No sooner than 30 days or later than 45 days from date of notice of hearing authority. Alteration by mutual consent.		X		
	CONDUCT OF HEARING:				
	1. Fair and impartial				
	2. Closed, unless open hearing is requested by : Parents and school.		X		
	3. Right of				
	a. Compel attendance of witnesses		X		
	b. Representation by: legal counsel		X		
	c. Present evidence and testimony		X		
	d. Confront and cross-examine adverse witnesses		X		
	e. Interpreters for deaf and/or fluent in primary language of home				
	f. Attendance by minor child at option of parent				
	4. Burden of proof on:				
	5. Record of hearing: Tape recording or other verbatim record available at reasonable cost if requested by a party.		X		
	SCOPE OF REVIEW:				
	DECISION FOLLOWING HEARING: (1) whether there has been prejudicial departure by local authorities from evaluation and placement procedures as prescribed by special education regulations, (2) whether local authorities have established by a preponderance of evidence presented that sufficient cause existed for decision.		X		
	2. Form: Written sent by certified mail to parent, superintendent of local education agency and legal reps. within 20 days hearing.		X		
	3. Statement of rights sent with decision: right to appeal.		X		
	4. Other: (a) if decision disproves ed. plan should include statement ~~as to what is adequate and appropriate alternative; (b) if approves~~ program should include a finding that a less restrictive program could not adequately and appropriately serve child's needs.		X		
OTHER DUE PROCESS PROVISIONS					

Footnotes

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART I: REFERRAL, EVALUATION AND PLACEMENT.

STATE: New York	ADMINISTRATIVE PROVISION: Regulations of the Commissioner of Education: Subchapter P-Handicapped Children (Due Process Provisions, May 1, 1976)	CITATION §	REFERRAL	EVALUATION	PLACEMENT	OTHER
DUE PROCESS PROVISIONS						
NOTICE to parent or guardian	I. OF: Proposed classification of handicapping condition.	200.10(a)				X
	II. OF: Recommended change in educational program or placement	200.10(b)			X	
	ITEMS ON NOTICE:					
	1. Request parent:					
	2. Description of:					
	a. Proposed or requested action, or decision: Proposed classification; recommended change in educational program or placement				X	X
	b. Reasons for action or decision: Proposed classification; recommended change in educational program or placement				X	X
	3. Names of persons responsible for:					
	4. Specification of tests, instruments or reports: On which proposed classification/recommended placement/program was based				X	X
	5. When action involves placement or denial of placement:					
	a. Description of alternative educational placements					
	b. Reasons why such alternative placements are not appropriate for child					
	6. Statement that parents will be informed of results of:					
	7. Statement of opportunity/right to:					
	a. Obtain independent evaluation				X	X
	(1) At expense of:					
	(2) Names, addresses and telephone numbers of public agencies offering free evaluation				X	X
	b. Meet and consult with school personnel concerning: Recommended change in educational program or placement: informal hearing prior to formal hearing				X	
	c. Participate in committee meetings regarding:					
	(1) Right to representation by:					
	8. Statement of right to:					
	a. Refuse to consent to: Proposed classification; proposed change in placement or program.					X
	(1) However, LEA can request hearing to try to obtain approval					
	b. Inspect and copy relevant student records				X	X
	c. Appeal					
	d. Due process hearing, if parent objects to action - classification				X	X
	9. Description of:					
	a. Procedures for objecting to action or appealing decision					
	b. Procedural rights at due process hearing:					
	c. Procedures for appealing decision resulting from due process hearing				X	X
	10. List of community agencies offering legal counsel for indigents					
	11. Declaration that child's educational status will not be changed without consent of parent, or until due process procedures have been exhausted					X
	a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by: unspecified				X	X
	12. Other:					
CONSULTATION with parent or guardian	RE: Committee meeting to determine whether child possesses a handicapping condition and whether special educational services should be recommended. Parents should be invited to present pertinent information to the committee.[1]	§200.2(b)				X
CONSENT by parent or guardian						
OTHER AREAS of parental involvement or rights						

Footnotes [1] Parents are not provided notice of this right.

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART II: APPEAL.

STATE: New York — ADMINISTRATIVE PROVISION: Regulations of the Commissioner of Education: Subchapter P-Handicapped Children (Due Process Provisions, May 1, 1976)

STAGES OF APPEAL		CITATION
INITIAL APPEAL	REGULATORY CATEGORY: Hearing where parent objects to (1) proposed recommendation classifying child as "handicapped" or (2) proposed change in educational program or placement. See below.	§200.10 (c)
SUBSEQUENT APPEAL	OF: Determination chief school officer. TO: Commissioner of Education, who may delegate to the Assistant Commissioner for Education of Children With Handicapping Conditions the right to decide such appeals. PROCEDURE: Review of record in the proceedings below. Either party may submit statements in support or opposition to the determination sought to be reviewed. Decision of chief school officer shall be affirmed if supported by substantial evidence. WHEN: Within 10 days after receipt of determination.	§200.10 (d)
JUDICIAL REVIEW	Pursuant to Article 78 of Civil Practice Law and Rules.	§200.10 (d)(3)

DUE PROCESS PROVISIONS		INITIAL APPEAL NOTICE	INITIAL APPEAL PROCEDURE	SUBSEQUENT APPEAL NOTICE	SUBSEQUENT APPEAL PROCEDURE
PRE-HEARING	PRE-HEARING CONFERENCE with school officials: Informal hearing to attempt resolution of conflicting points		X		
	NOTICE OF: (See also CONDUCT OF HEARING)				
	1. Specification of tests, instruments or reports on which proposed placement is based				
	2. Review and appeal procedures:				
	3. Names of:				
	4. Statement of right to:				
	a. Independent evaluation				
	b. Inspect and copy relevant records				
	c. Compel attendance at hearing of witnesses				
	5. Exact time and place of hearing				
	OTHER:				
HEARING	BEFORE: Chief school officer or impartial hearing officer designated by him who shall be unbiased, disinterested, and uninvolved (not a participant in prior proceedings in the case.)		X		
	WHEN:				
	CONDUCT OF HEARING:				
	1. Fair and Impartial		X		
	2. Closed, unless open hearing is requested by: Parents		X		
	3. Right of				
	a. Compel attendance of witnesses				
	b. Representation by: Legal counsel or others		X		
	c. Present evidence and testimony				
	d. Confront and cross-examine adverse witnesses		X		
	e. Interpreters for deaf and/or fluent in primary language of home at district's expense		X		
	f. Attendance by minor child at option of parent. Hearing officer may exclude if presence would be harmful		X		
	4. Burden of proof on: Parent as to inappropriateness of any proposed classification or placement.				
	5. Record of hearing: Summary		X		
	SCOPE OF REVIEW:				
	DECISION FOLLOWING HEARING: [1]				
	1. Scope: See #4 below				
	a. Includes: Reasons and factual basis for determination		X		
	b. Based solely on evidence and testimony presented at hearing		X		
	2. Form: Written		X		
	3. Statement of rights sent with decision: Procedures for appeal to Commissioner of Education included		X		
	4. Other: Hearing officer makes written findings of fact and recommendation to the chief school officer w/in 10 days as to the appropriate classification or ed. placement. Copy sent by cert. mail to parents & school w/ indication not binding. The parents, school authorities and respective representatives may submit objections to proposed findings of fact & recommendations, w/in 10 days. Chief school officer renders binding decision w/in 10 days.				
OTHER DUE PROCESS PROVISIONS	Except where presence of a child poses continuing danger or threatens disruption of academic process, the child shall remain in present ed. placement pending review of decision of Chief school officer by Commissioner of Education or his designee.				X

Footnotes [1] Information indicated in #5.1-3 applies to decision of chief school official (not that of hearing officer)

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART I: REFERRAL, EVALUATION AND PLACEMENT.

STATE: North Carolina — ADMINISTRATIVE PROVISION: Rules Governing Program Services for Children with Special Needs (Feb., 1976) Procedure for Review under C.1291 Exhibit A (undated)					
DUE PROCESS PROVISIONS	CITATION	REFERRAL	EVALUATION	PLACEMENT	OTHER
NOTICE to parent or guardian — I. OF: Evaluation: Need for added comprehensive screening and assessment data. WHEN: Prior to further action.	Rules .0609 (b)(2)(c)		X		
II. OF: Placement: A. Decision concerning placement, denial of placement, or continuance of placement. FORM: Certified letter or conference.	Rules .0609(d)			X	
B. Change in placement following annual review.	Procedure (1) Rules .0609(b)(4)			X	
ITEMS ON NOTICE: 1. Request parent:					
2. Description of: a. Proposed or requested action, or decision: of change of placement following annual review; that added screening and assessment data is needed; decision concerning placement, denial or continuance.			X	A,B	X
b. Reasons for action or decision re placement.				A	
3. Names of persons responsible for:					
4. Specification of tests, instruments or reports:					
5. When action involves placement or denial of placement: a. Description of alternative educational placements					
b. Reasons why such alternative placements are not appropriate for child					
6. Statement that parents will be informed of results of:					
7. Statement of opportunity/right to: a. Obtain independent evaluation				A	
(1) At expense of:					
(2) Names, addresses and telephone numbers of public agencies offering free evaluation				A	
b. Meet and consult with school personnel concerning:					
c. Participate in committee meetings regarding:					
(1) Right to representation by:					
8. Statement of right to: a. Refuse to consent to:					
(1) However, LEA can request hearing to try to obtain approval					
b. Inspect and copy relevant student records				A	
c. Appeal					
d. Due process hearing, if parent objects to action;				A	
9. Description of: a. Procedures for objecting to action or appealing decision: Written request for review 15-30 days from date of notice, and name and address of entity to request.				A	
b. Procedural rights at due process hearing: Closed unless parents request open hearing, examine and cross-examine witnesses, introduce evidence, appear in person, be represented by counsel; child may also appear at hearing.				A	
c. Procedures for appealing decision resulting from due process hearing					
10. List of community agencies offering legal counsel for indigents					
11. Declaration that child's educational status will not be changed without consent of parent, or until due process procedures have been exhausted				A	
a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by: without prejudice to rights pursuant to Act.				A	
12. Other: Right to: Review data forming basis of placement decision, challenge data, and provide additional data that could affect placement.				A	
CONSULTATION with parent or guardian — RE: Notice of decision re placement, right to challenge data, and right to appeal.[1] (alternative to certified letter). FORM: A written statement must be drafted indicating that conference has been held and parent has been advised of decision and rights.	Rules .0609 (b)(3)(E)(i)				
CONSENT by parent or guardian — TO: Placement or change in placement.[1] WHEN: Prior to action. EXCEPTION: In the most unusual circumstances, it may be necessary to place a child without parental consent. This is permissible as a last resort, but only upon recommendation of the Administrative Placement Committee and with approval of the local superintendent. The parent is entitled to appeal following due process procedures.[2]	Rules .0609 (b)(9)				
OTHER AREAS of parental involvement or rights					

Footnotes

[1]

[2] See above under NOTICE
Parents are not provided notice of this right.

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART II: APPEAL.

STATE: North Carolina ADMINISTRATIVE PROVISION: Rules Governing Program Services for Children with Special Needs (Feb., 1976); Procedure for Review Under C. 1293, Exhibits A and B (undated).

STAGES OF APPEAL		CITATION
INITIAL APPEAL	REGULATORY CATEGORY: Review of acts and omissions by state or local authorities: (1) denying entry or continuance in a program appropriate to condition and needs. (2) placing in a program which is inappropriate, unsuitable or inadequate to condition and needs, or (3) assigning to a special program when he is not a child with special needs. PROCEDURE: Hearing. (See below) HOW INITIATED: Written request by parent 15-30 days from notice of placement decision.	Rules .0611 (f), (g); Procedure
SUBSEQUENT APPEAL	OF: Decisions of local school boards. TO: State Superintendent of Public Instruction. OF: Decision of Advocacy Council[1] TO: Secretary of Human Resources. HOW INITIATED: Written request within 30 days of receipt of school board decision. PROCEDURE: Hearing. (See below) Nothing shall prohibit parent from petitioning State Board of Education for review of final administrative decision. Final administrative decision, however, is that if the State Superintendent of Public Instruction, and any appeal of the final administrative decision to courts must be filed within 30 days of receipt of final administrative decision.	.0611(b) (2) .0612 (Rules), Procedures
JUDICIAL REVIEW	OF: Decision of State Superintendent of Public Instruction. TO: Courts HOW INITIATED: Within 30 days of receipt of notice of decision.	.0612(f) (2)(B)

DUE PROCESS PROVISIONS		INITIAL APPEAL		SUBSEQUENT APPEAL	
		NOTICE	PROCEDURE	NOTICE	PROCEDURE
PRE-HEARING[2]	PRE-HEARING CONFERENCE with school officials				
	NOTICE OF: (See also CONDUCT OF HEARING)				
	1. Specification of tests, instruments or reports on which proposed placement is based				
	2. Review and appeal procedures:				
	3. Names of:				
	4. Statement of right to:				
	a. Independent evaluation				
	b. Inspect and copy relevant records			X	X
	c. Compel attendance at hearing of witnesses				
	5. Exact time and place of hearing must be sent by registered mail at least 20 days prior to hearing date.			X	
	OTHER: Notice of: 1. Name of hearing officer; 2. Right to request delay in hearing, bases for granting request.			X	
HEARING[2]	BEFORE: Initial Appeal: Local school board or State Advocacy Council (if child is in program operated by Dept. of Human Resources or not operated by the public schools) SUBSEQUENT APPEAL: Hearing officer designated by State		X		X
	WHEN: Supt. of Public Instruction. SUBSEQUENT: Within 30 days of receipt of request.				X
	CONDUCT OF HEARING:				
	1. Fair and impartial, informal: technical rules of evidence need not be observed.				X
	2. Closed, unless open hearing is requested by: parent in writing at least 10 days prior to hearing.				X
	3. Right of				
	a. Compel attendance of witnesses				
	b. Representation by: Counsel		X	X	X
	c. Present evidence and testimony including clinical evaluations		X	X	X
	d. Confront and cross-examine adverse witnesses		X	X	X
	e. Interpreters for deaf and/or fluent in primary language of home				
	f. Attendance by minor child at option of parent as of right		X		X
	4. Burden of proof on:				
	5. Record of hearing: Transcript made available upon request if prepaid by parent, or free if parent is indigent.			X	X
	SCOPE OF REVIEW: Standard: Best interest of child.				X
	OTHER: School may examine child only under direction of hearing officer				X
	DECISION FOLLOWING HEARING:				
	1. Scope: Standard: Best interest of child.				X
	a. Includes: INITIAL: Conclusions supported by reasons. SUBSEQUENT: Reasons and facts supporting decision.		X		X
	b. Based solely on evidence and testimony presented at hearing				
	2. Form: Writing, sent by registered mail. INITIAL: Immediately. SUBSEQUENT: Within 30 days.	X		X	
	3. Statement of rights sent with decision: Appeal by request within 30 days. (INITIAL), judicial review (SUBSEQUENT).	X		X	
	4. Other: INITIAL: Within 7 days of hearing. SUBSEQUENT: Within 25 days of hearing.		X		X
OTHER DUE PROCESS PROVISIONS					

Footnotes

[1] Secretary of Human Resources is empowered to promulgate rules and regulations for conduct of hearings upon review of determination of the Advocacy Council. He may appoint either hearing officer or Board to hear such cases. Due process requirements of notice and opportunity to be heard must adhere to any rules promulgated by Secretary.

[2] Information appearing under SUBSEQUENT APPEAL COLUMN of HEARING applies only to appeals to State Sup't. of Public Instr.

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART I: REFERRAL, EVALUATION AND PLACEMENT.

STATE: North Dakota	ADMINISTRATIVE PROVISION: Due Process: Supplement to Guide 1A - Laws, Regulations and Guidelines for Special Education for Exceptional Students (Oct. 17, 1975)	CITATION §	REFERRAL	EVALUATION	PLACEMENT	OTHER
DUE PROCESS PROVISIONS						
NOTICE to parent or guardian	I. OF: Evaluation: Results. WHEN: Prior to beginning special education services. FORM: Personal conference.	II.1.E.		X		
	II. OF: Placement: A. Tentative recommendations re placement.	III.2.A.			X	
	B. Changes in program plan or recommended placement following annual review.	IV.2.A.			X	
	C. Hearing procedures if parents do not approve placement.	III.3.B.			X	
	ITEMS ON NOTICE:					
	1. Request parent:					
	2. Description of:					
	a. Proposed or requested action, or decision: Results of evaluation; recommendation re placement, including changes after review.			A	A.B	
	b. Reasons for action or decision					
	3. Names of persons responsible for:					
	4. Specification of tests, instruments or reports:					
	5. When action involves placement or denial of placement:					
	a. Description of alternative educational placements					
	b. Reasons why such alternative placements are not appropriate for child					
	6. Statement that parents will be informed of results of:					
	7. Statement of opportunity/right to:					
	a. Obtain Independent evaluation					
	(1) At expense of:					
	(2) Names, addresses and telephone numbers of public agencies offering free evaluation					
	b. Meet and consult with school personnel concerning:					
	c. Participate in committee meetings regarding:					
	(1) Right to representation by:					
	8. Statement of right to:					
	a. Refuse to consent to:					
	(1) However, LEA can request hearing to try to obtain approval					
	b. Inspect and copy relevant student records					
	c. Appeal					
	d. Due process hearing, if parent objects to action					
	9. Description of:					
	a. Procedures for objecting to action or appealing decision: Hearing, if parents have not approved placement.				C	
	b. Procedural rights at due process hearing:					
	c. Procedures for appealing decision resulting from due process hearing					
	10. List of community agencies offering legal counsel for indigents					
	11. Declaration that child's educational status will not be changed without consent of parent, or until due process procedures have been exhausted					
	a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by:					
	12. Other:					
CONSULTATION with parent or guardian	I. RE: Results of evaluation[1].	III.1.E.		X		
	II. RE: Interview in connection with evaluation[2].	II.3.B.1.		X		
	III. RE: Placement and education program decisions[2]. Parents must be included in Placement Committee meeting.	III.1.A.2 (g)			X	
CONSENT by parent or guardian	I. TO: Screening - initial screening of all students and additional individual screening.[2] Parental approval may be requested but is not required.	II.1.a,B.				X
	II. TO: Individual evaluation. FORM: Written.	II. 1.C.		X		
OTHER AREAS of parental involvement or rights	III. TO: Written plan.[2] FORM: Written.	III.3.A.				X
	IV. TO: Placement.[2] FORM: Written.	IV.2.A.			X	
Footnotes	[1] See above under NOTICE [2] Parents are not provided notice of this right.					

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART II: APPEAL.

STATE: North Dakota — ADMINISTRATIVE PROVISION: Due Process: Supplement to Guide 1 A - Laws, Regulations and Guidelines for Special Education for Exceptional Students (Oct. 17, 1975)

STAGES OF APPEAL		CITATIONS
INITIAL APPEAL	REGULATORY CATEGORY: Hearing initiated by: A. Parents, where: Handicapped student is not being provided educational program or present special education service is not considered appropriate. B. Parents or school, where: 1. School district has recommended placement in special education program and there is disagreement over the recommendation; 2. Parents want student enrolled in special education program and school district says he doesn't need to be there; C. School, where: Child has been recommended for evaluation and permission has not been granted by parents.	V.1.A-G. V.2.A-G V.3.A-D.
SUBSEQUENT APPEAL	OF: Decision of hearing officer. TO: The State Board of Public School Education. HOW INITIATED: By the parent or the school district within 10 days after a decision has been made.	V.4.A.
JUDICIAL REVIEW	OF: Decision of State Board of Public School Education. TO: Courts.	V.4.A.

DUE PROCESS PROVISIONS		INITIAL APPEAL NOTICE	INITIAL APPEAL PROCEDURE	SUBSEQUENT APPEAL NOTICE	SUBSEQUENT APPEAL PROCEDURE
PRE-HEARING	PRE-HEARING CONFERENCE with school officials or state agency personnel by hearing officer, at his option.		X		
	NOTICE OF: (See also CONDUCT OF HEARING) 1. Specification of tests, instruments or reports on which proposed placement is based				
	2. Review and appeal procedures: To be used at hearing - outline form.	X			
	3. Names of:				
	4. Statement of right to: a. Independent evaluation				
	b. Inspect and copy relevant records		X		
	c. Compel attendance at hearing of witnesses				
	5. Exact time and place of hearing sent within 20 days of date of notice.	X			
	OTHER: Educational status cannot be changed until final decision of hearing officer is rendered.		X		
HEARING	BEFORE: State hearing officer appointed by Department of Public Instruction Special Education. The hearing officer may ask for appointment of impartial hearing board composed of 3 members outside of the county and school district, including at least 2 persons with educational expertise relevant to student's special needs.		X		
	WHEN:				
	CONDUCT OF HEARING: 1. Fair and impartial		X		
	2. Closed, unless open hearing is requested by :				
	3. Right of a. Compel attendance of witnesses				
	b. Representation by: Legal counsel		X		
	c. Present evidence and testimony		X		
	d. Confront and cross-examine adverse witnesses		X		
	e. Interpreters for deaf and/or fluent in primary language of home		X		
	f. Attendance by minor child at option of parent				
	4. Burden of proof on: School district as to adequacy and appropriateness of proposed placement or program.		X		
	5. Record of hearing: Right to copy (verbatim) upon request.		X		
	SCOPE OF REVIEW: If decision is to disapprove proposed education plan, must state alternative plan which is adequate and appropriate.		X		
	DECISION FOLLOWING HEARING: 1. Scope: If decision is to disapprove proposed education plan, must state alternative plan which is adequate and appropriate.		X		
	a. Includes: Findings, conclusions and reasons.		X		
	b. Based solely on evidence and testimony presented at hearing		X		
	2. Form: Written in English and in primary language of home sent to parent.	X			
	3. Statement of rights sent with decision: Appeal procedures.	X			
	4. Other:				
OTHER DUE PROCESS PROVISIONS					

Footnotes

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART I: REFERRAL, EVALUATION AND PLACEMENT.

STATE: Ohio

ADMINISTRATIVE PROVISION: Amendment to State Plan - Appendix B: Proposed Due Process Safeguards, (FY 1975); Draft of Standards as filed with Secretary of State.

DUE PROCESS PROVISIONS	CITATION	REFERRAL	EVALUATION	PLACEMENT	OTHER
NOTICE to parent or guardian					
I. OF: Assessment A. Description of problem and reason for assessment. FORM: Primary language with interpreter provided. B. Description of assessment tests and instruments. C. Intent to identify and evaluate child. WHEN: Prior to evaluation activities. FORM: Written and oral, in primary language of home.	App.B,IA, App.B,IC, Draft Standards B.2.a.		X X X		
II. OF: Placement A. Procedures re placement and rights of parents re placement procedures. FORM: Written and, if possible oral. B. Possible placements that psychological assessment might indicate. FORM: Written. WHEN: Prior to placement. (Continued next page)	App.B,IB, App.B,IE			X X	
ITEMS ON NOTICE:					
1. Request parent: Written permission to test; to attend annual review conference.			C		IV
2. Description of: a. Proposed or requested action, or decision: Assessment-problem requiring; tests, instruments and procedures; results & interpretation of tests; Placement-indicated by assess.; possible placement decisions; pro-			A,B,C	A-E	IV
b. Reasons for action or decision: posed plan, Annual review conf.-purpose, date, procedure, Annual review conference.			A,C	D	IV
3. Names of persons responsible for: Initiating assessment; assessment information; placement decisions.			C	A	
4. Specification of tests, instruments or reports: What they measure, name, and limitations of tests re pupil in question.			B		
5. When action involves placement or denial of placement: a. Description of alternative educational placements				D	
b. Reasons why such alternative placements are not appropriate for child				D	
6. Statement that parents will be informed of results of: Psychological assessment, including description and interpretation of results;[1] recommendations of review conference.				C	IV
7. Statement of opportunity/right to: a. Obtain independent evaluation			C		III
(1) At expense of: Parent.			C		
(2) Names, addresses and telephone numbers of public agencies offering free evaluation					
b. Meet and consult with school personnel concerning:				A,D	
c. Participate in committee meetings regarding:					
(1) Right to representation by:					
8. Statement of right to: a. Refuse to consent to: Assessment and/or program placement.			C	A,C	
(1) However, LEA can request hearing to try to obtain approval			C		
b. Inspect and copy relevant student records, including evaluation data.			C	A,E	
c. ~~Appeal~~ Review of program placement at the building level.				A	
d. Due process hearing, if parent objects to action					
9. Description of: a. Procedures for objecting to action or appealing decision				C	
b. Procedural rights at due process hearing:					
c. Procedures for appealing decision resulting from due process hearing					
10. List of community agencies offering legal counsel for indigents					
11. Declaration that child's educational status will not be changed without consent of parent, or until due process procedures have been exhausted			C	E	
a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by: Unspecified.				E	
12. Other: a. Right to legal counsel and outside consultation regarding any aspect of case. b. Any special considerations in analyzing pupil's test performance. c. Advice where additional help for pupil might be obtained outside school d. Procedures which will be used to assess pupil's progress in program.			B	A,C C D	
CONSULTATION with parent or guardian I. RE: Any aspect of assessment, placement and/or interevention, Parent may bring legal counsel or friend or other.[2] WHEN: Prior to placement in or removal from special education classroom, Upon request. II. RE: Case conference-to review and interpret information, 4 Parent may request. (Continued on next page).	App.B.I. B.5 III.D.5 Draft Standards D.2.		X X	X	
CONSENT by parent or guardian I. TO: Psychological assessment.[2,3] WHEN: Prior to assessment. FORM: Written. II. TO: Placement, continuation, alteration, or termination in special education program. WHEN: Prior to implementing decision. FORM: Written.	App.B.I. B.4. III.I		X	X	
OTHER AREAS of parental involvement or rights I. The school must provide parent opportunity: 1. To present information relevant to the program and/or intervention that school is recommending (e.g., results of psychological assessment done by persons not employed by school district at parents expense. 2. To review and examine all records on (Continued on next page)					X X

Footnotes

[1] Description will include possible factors adversely affecting pupil's performance on tests e.g. hearing problem, cultural bias in tests. (Continued on next page)

NOTICE to parent or guardian (Continued)

II. C. Reminder of placement procedures and parents' rights re these procedures.
WHEN: Prior to placement. CITATION: App. B. III A-H.

D. Placement decision, description of program.
FORM: Written, and if possible, oral. CITATION: App.B. III D.

E. Proposed change in educational status or denial of requested change in placement. FORM:Written (certified mail) and oral, in primary language of home. WHEN: 15 days after receipt of placement team conference report by superintendent. Draft Standards B.3.

III. OF: Right to independent evaluation. CITATION: III.E.

IV. OF: Annual review scheduled. WHEN: At least 15 days prior to review. FORM: Orally and written, in primary language of home.

CONSULTATION with parent or guardian (Continued)

III. WE: Conference of multidisciplinary team. Team chairperson has discretion to include parents.[4] If parents participate, they must sign conference report.

OTHER AREAS of parental involvement or rights (Continued)

(2., Continued) which program placement and/or recommendation is based.[2]

II. All school districts and other educational agencies shall adopt and make available written policies and procedures concerning identification, evaluation, placement and periodic review processes, including due process and procedural safeguards. Draft Standards A.3.

Footnotes

[2] See above under NOTICE.
[3] Only in unusual circumstances will a psychological assessment be completed without written parental permission: where professional school personnel agree that pupil is in program that clearly does not meet his needs. In these special cases, decision to complete or discontinue the case will be made through case review process.
[4] Parents are not provided notice of this right.

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART II: APPEAL.

STATE: Ohio — ADMINISTRATIVE PROVISION: Amendment to State Plan; Appendix B: Proposed Due Process Safeguards (FY 1975)

STAGES OF APPEAL		CITATION
INITIAL APPEAL	REGULATORY CATEGORY: Review initiated by: A. Parent, where parent disagrees with school decision, B. School where both the following conditions exist: (1) The parent refuses to give permission for psychological assessment and/or placement or fails to respond to school's communique, and (2) it is decided at building level that pupil is in program that does not meet his needs and/or for which he may not be eligible, and thus assessment and/or placement is essential). PROCEDURE: Hearing.[1] (See below) Also, each school district should develop additional written procedures for conducting case review and appeal activities.	App.B. § IV A-F; Draft Standards D.
SUBSEQUENT APPEAL	OF: Decision of hearing officer. PROCEDURE: Administrative review. Note: Draft Standards provide that any party aggrieved by decision of superintendent shall present a formal complaint in writing w/in 20 days to the Board of Ed. requesting impartial due process hearing. Parents shall be advised of their right to submit additional information, & parents must receive a copy of information submitted by supt., to Board. Review by Board shall be based on study of materials sent by parents & supt., but Board may request further information by oral	App.B § IV F.
JUDICIAL REVIEW	OF: Decision of hearing officer. (IV.,F); of Board of Education (Draft Standards) TO:	App.B § IV.F. Draft Stand. D.7

(Continued on next page)

DUE PROCESS PROVISIONS		INITIAL APPEAL NOTICE	INITIAL APPEAL PROCEDURE	SUBSEQUENT APPEAL NOTICE	SUBSEQUENT APPEAL PROCEDURE
PRE-HEARING	PRE-HEARING CONFERENCE with school officials	X	X		
	NOTICE OF:[2] (See also CONDUCT OF HEARING)				
	1. Specification of tests, instruments or reports on which proposed placement is based				
	2. Review and appeal procedures:	X			
	3. Names of: Persons providing information and responsible for review decision.	X			
	4. Statement of right to:				
	a. Independent evaluation at cost of parent.	X			
	b. Inspect and copy relevant records	X	X		
	c. Compel attendance at hearing of witnesses	X			
	5. Exact time and place of hearing - sent not less than 10 days prior to hearing.	X			
	OTHER: 1. Notice that case is being reviewed and reasons. 2. School may obtain relevant information from parent and appropriate (Continued next page)	1	2		
HEARING[3]	BEFORE: Superintendent of school or designee. School district procedure must insure that selection process for such designee insures impartiality.		X		
	WHEN: Maximum 15 days after date of request.[5]		X		
	CONDUCT OF HEARING: Opportunity for all conference participants to thoroughly discuss any aspect of the case that might have bearing on the assessment and/or placement decision.		X		
	2. Closed, unless open hearing is requested by:				
	3. Right of				
	a. Compel attendance of witnesses				
	b. Representation by: Legal counsel and/or outside consultant.	X	X		
	c. Present evidence and testimony		X		
	d. Confront and cross-examine adverse witnesses		X		
	e. Interpreters for deaf and/or fluent in primary language of home		X		
	f. Attendance by minor child at option of ~~parent~~ hearing officer.		X		
	4. Burden of proof on: Superintendent as to adequacy and appropriateness of proposed course of action.		X		
	5. Record of hearing: Electronic or written verbatim record. Provided to parent upon request - one copy free.		X		
	SCOPE OF REVIEW: Review of pertinent information from (a) pupil's school record; (b) the psychological assessment (if completed); other pertinent information regarding the pupil's school performance and behavior.		X		
	DECISION FOLLOWING HEARING:				
	1. Scope:				
	a. Includes: Summary of information considered in review decision and statements or materials requested to appear in record.		X		
	b. Based solely on evidence and testimony presented at hearing		X		
	2. Form: Written report sent by registered mail within 10 school days of conference.[6]	X		see above Sub. Appeal	
	3. Statement of rights sent with decision: Procedures for appeal to State Board of Education and to court.	X			
	4. Other: Summary shall be in English and in primary language of home if other than English. Should include any material or statements specifically requested to appear in the record.		X		
OTHER DUE PROCESS PROVISIONS					

SUBSEQUENT APPEAL (Continued)

testimony or in writing, and technical assistance. Board shall issue final order within 60 days of receipt of appeal (may be extended by request). Copies of decision must be sent to parents by certified mail in English and in primary language of home. D.4.d., 6.

DUE PROCESS PROVISIONS
PREHEARING
OTHER: (Continued)

professional personnel. (Draft Standards provide that educational status of child will not be changed unless health or safety of child would be endangered. In such case superintendent shall state in writing the reasons the emergency exists and shall be responsible for developing an appropriate interim placement. Parents must be notified, prior to hearing, of these provisions. D.5.b.(3)(f))

Footnotes (Continued)

[3] Information on chart is required in addition to due process requirements established by each school district.

[4] However, Draft Standards provide that if parent and superintendent will mutually select a hearing officer. If they cannot agree, State Department of Education shall appoint one. If agency directly affected by placement decision objects to choice, an impartial hearing officer appointed by school district and objecting agency from list prepared by State Department of Education in consultation with the Department of Mental Health and Mental Retardation shall conduct hearing.

[5] However, Draft Standards provide that hearing shall be conducted within 40 days of receipt of request, unless otherwise agreed. D.5.a.(3).

[6] However, Draft Standards provide that superintendent shall notify parties of decision (with or without hearing) within 20 days. D.4.a.

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART I: REFERRAL, EVALUATION AND PLACEMENT.

STATE: Oklahoma	ADMINISTRATIVE PROVISION: State Board of Education Regulations Pertaining to Special Education for Exceptional Children (Feb. 1975).	CITATION §	REFERRAL	EVALUATION	PLACEMENT	OTHER
DUE PROCESS PROVISIONS						
NOTICE to parent or guardian	I. OF: Evaluation - request permission. WHEN: Prior to evaluation. FORM: Letter.	A.2		X		
	II. OF: Proposed change in child's educational program, including proposed changes resulting from periodic reviews or when parent's request for a different placement is denied. WHEN: In advance of proposed change. FORM: Orally and in writing, by certified mail.	A.3			X	
	ITEMS ON NOTICE:					
	1. Request parent: Permission to test.			X		
	2. Description of:					
	a. Proposed or requested action, or decision: Proposed evaluation; proposed change in placment.			X	X	
	b. Reasons for action or decision: Proposed evaluation; proposed change in placement.			X	X	
	3. Names of persons responsible for: Initiating process leading to proposed evaluation.			X		
	4. Specification of tests, instruments or reports: On which proposed or requested change in placement is based.				X	
	5. When action involves placement or denial of placement:					
	a. Description of alternative educational placements				X	
	b. Reasons why such alternative placements are not appropriate for child				X	
	6. Statement that parents will be informed of results of: Evaluation			X		
	7. Statement of opportunity/right to:					
	a. Obtain independent evaluation				X	
	(1) At expense of: Public				X	
	(2) Names, addresses and telephone numbers of public agencies offering free evaluation				X	
	b. Meet and consult with school personnel concerning:					
	c. Participate in committee meetings regarding:					
	(1) Right to representation by:					
	8. Statement of right to:					
	a. Refuse to ~~consent to~~ permit evaluation.			X		
	(1) However, LEA can request hearing to try to obtain approval for evaluation			X		
	b. Inspect and copy relevant student records at reasonable cost.			X	X	
	c. Appeal					
	d. Due process hearing, if parent objects to action proposed or requested change in placement.				X	
	9. Description of:					
	a. Procedures for objecting to action or appealing decision					
	b. Procedural rights at due process hearing: All rights.				X	
	c. Procedures for appealing decision resulting from due process hearing				X	
	10. List of community agencies offering legal counsel for indigents				X	
	11. Declaration that child's educational status will not be changed without consent of parent, or until due process procedures have been exhausted			X	X	
	a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by: Hearing examiner.				X	
	12. Other:					
CONSULTATION with parent or guardian	RE: Resolution of difference, where parents refuse to permit evaluation.[1]	A.2.a.				
CONSENT by parent or guardian	TO: Individual evaluation procedures.[2] (formal testing, informal assessment, observation). WHEN: In advance of procedures. FORM: Written.	A.2				
OTHER AREAS of parental involvement or rights						
Footnotes	[1] [2] Parents are not provided with notice of this right. See above under NOTICE.					

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART II: APPEAL.

STATE: Oklahoma — ADMINISTRATIVE PROVISION: State Board of Education Regulations Pertaining to Special Education for Exceptional Children (Feb. 1975).

STAGES OF APPEAL		CITATION §
INITIAL APPEAL	REGULATORY CATEGORY: Appeal initiated by: A. Parents objecting to proposed change in placement or whose request for different placement has been denied. B. LEA 1. Where parents refuse to permit evaluation. 2. Where parents fail to respond to LEA's attempts to obtain consent. PROCEDURE: Hearing. See below.	A.4 A.2
SUBSEQUENT APPEAL	OF: Decision of hearing officer. TO: State Board of Education or impartial designee meeting same qualifications as hearing officer. BY: Parent or LEA. Generally, if parents reject decision of hearing officer, rejection constitutes automatic appeal. PROCEDURE: In accordance with state administrative procedure act or other statutes governing appeals of administrative proceedings.	A.4.d.
JUDICIAL REVIEW	OF: Decision of State Board of Education or impartial designee. TO: State Court.	A.4.d.

DUE PROCESS PROVISIONS		INITIAL APPEAL		SUBSEQUENT APPEAL	
		NOTICE	PROCEDURE	NOTICE	PROCEDURE
PRE-HEARING	PRE-HEARING CONFERENCE with school officials				
	NOTICE OF: (See also CONDUCT OF HEARING)				
	1. Specification of tests, instruments or reports on which proposed placement is based				
	2. Review and appeal procedures;				
	3. Names of;				
	4. Statement of right to;				
	a. Independent evaluation at public expense.		X		
	b. Inspect and copy relevant records		X		
	c. Compel attendance at hearing of witnesses		X		
	5. Exact time and place of hearing	X			
	OTHER: Steps taken to assure child remains in present placement pending hearing decision unless hearing officer orders change in emergency situations.		X		
HEARING	BEFORE: Hearing officer: unbiased, disinterested and independent of LEA. Should be employee of SEA at regional or central level.		X		
	WHEN: At next scheduled meeting of local board of education, if request is made within 10 days of such meeting; otherwise at next scheduled meeting.		X		
	CONDUCT OF HEARING:				
	1. Fair and impartial				
	2. Closed, unless open hearing is requested by: Parents.		X		
	3. Right of				
	a. Compel attendance of witnesses				
	b. Representation by: Legal counsel, other professional persons, or other.		X		
	c. Present evidence and testimony		X		
	d. Confront and cross-examine adverse witnesses		X		
	e. Interpreters for deaf and/or fluent in primary language of home at public expense.		X		
	f. Attendance by minor child at option of parent except hearing officer may exclude child from portions if attendance harmful.		X		
	4. Burden of proof on: See next page				
	5. Record of hearing: Verbatim, transcribed and provided upon request.		X		
	SCOPE OF REVIEW:				
	DECISION FOLLOWING HEARING:				
	1. Scope: Statement as to what is adequate and appropriate educational program.		X		
	a. Includes: Facts, conclusions and reasons for each.		X		
	b. Based solely on evidence and testimony presented at hearing		X		
	2. Form: Written, within 20 days by certified mail to parents, LEA and representatives.	X	X		
	3. Statement of rights sent with decision;	X			
	4. Other: Summary of proceedings shall be made available including any materials or statements specifically requested to appear in record.		X		
OTHER DUE PROCESS PROVISIONS					

Footnotes

HEARING

4. Burden of Proof on:

A. Parent initiated hearing: The burden of proof as to the appropriateness of any proposed placement, as to why more normalized placements could not adequately and appropriately serve the child's educational needs, and as to the adequacy and appropriateness of any test or evaluation procedure, will be upon the local educational agency.

B. LEA initiated hearing:
1. Where parents refused to permit evaluation: The burden of proof is on LEA to demonstrate that the continued placement of the child is so dangerous to his/her health or safety or so disruptive to the program for the other children that the initiation of the evaluation procedure is justified as the first step to a special program placement.

2. Where parents failed to respond the LEA's attempts to obtain consent to evaluation: In order for the LEA to prevail, it must: a. demonstrate with documentation that it has repeatedly attempted to contact the parent through efforts that were reasonably likely to succeed; and b. establish with facts about the child's performance in his/her present placement that there is reasonable likelihood that the child will be found to have special needs.

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART I: REFERRAL, EVALUATION AND PLACEMENT.

STATE: Oregon — ADMINISTRATIVE PROVISION: Oregon Administrative Rules (OAR): 22-165 (March 21, 1975); 22-175 (Dec. 26, 1975); 22-180 (Dec. 26, 1975)	CITATION	REFERRAL	EVALUATION	PLACEMENT	OTHER
DUE PROCESS PROVISIONS					
NOTICE to parent or guardian — I. OF: Placement. A. Proposed change in education program or parent's request for different placement (followed by notice of specific information). WHEN: Prior to proposed action. FORM: Written in English and primary home language, and oral in primary home language.	22-165			X	
B. Proposed placement. WHEN: Following school's verification that child is eligible for special education	22-180			X	
II. OF: Termination of special education services. FORM: Under district school board procedure.	22-175				X
ITEMS ON NOTICE: 1. Request parent:					
2. Description of: a. Proposed or requested action, or decision: Proposed change in program or parent's request for different placement; proposed placement				A,B	
b. Reasons for action or decision: proposed change in program				A	
3. Names of persons responsible for:					
4. Specification of tests, instruments or reports: On which proposed change of program is based				A	
5. When action involves placement or denial of placement: a. Description of alternative educational placements					
b. Reasons why such alternative placements are not appropriate for child					
6. Statement that parents will be informed of results of:					
7. Statement of opportunity/right to: a. Obtain independent evaluation					
(1) At expense of:					
(2) Names, addresses and telephone numbers of public agencies offering free evaluation					
b. Meet and consult with school personnel concerning:					
c. Participate in committee meetings regarding:					
(1) Right to representation by:					
8. Statement of right to: a. Refuse to consent to:					
(1) However, LEA can request hearing to try to obtain approval					
b. Inspect and copy relevant student records at reasonable cost				A	
c. Appeal					
d. Due process hearing, if parent objects to action: Proposed change in placement				A	
9. Description of: a. Procedures for objecting to action or appealing decision					
b. Procedural rights at due process hearing: unspecified - all.				A	
c. Procedures for appealing decision resulting from due process hearing					
10. List of community agencies offering legal counsel for indigents					
11. Declaration that child's educational status will not be changed without consent of parent, or until due process procedures have been exhausted				A	
a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by: Hearing examiner				A	
12. Other: a. Termination of special education services				A	X
b. Procedure for obtaining written consent to placement					
CONSULTATION with parent or guardian					
CONSENT by parent or guardian — I. TO: Conduct diagnostic evaluation.[1] FORM: Written.	22-180		X		
II. TO: Placement.[2] FORM: Written.	22-180			X	
OTHER AREAS of parental involvement or rights					

Footnotes

1/2 Parents are not provided notice of this right See above under NOTICE

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART II: APPEAL.

STATE: Oregon — ADMINISTRATIVE PROVISION: Oregon Administrative Rules (OAR): 22-165 (March 21, 1975); 22-175 (Dec. 26, 1975), 22-180 (Dec. 26, 1975).

STAGES OF APPEAL		CITATION
INITIAL APPEAL	REGULATORY CATEGORY: Hearing to contest proposed placement or change in placement or denial of parent's request for a different placement.	22-165
SUBSEQUENT APPEAL	OF: Decision of hearing officer. PROCEDURE: Appropriate administrative review.	22-165
JUDICIAL REVIEW	OF: Decision of hearing officer. PROCEDURE: Judicial review.	22-165

DUE PROCESS PROVISIONS		INITIAL APPEAL NOTICE	INITIAL APPEAL PROCEDURE	SUBSEQUENT APPEAL NOTICE	SUBSEQUENT APPEAL PROCEDURE
PRE-HEARING	PRE-HEARING CONFERENCE with school officials				
	NOTICE OF: (See also CONDUCT OF HEARING)				
	1. Specification of tests, instruments or reports on which proposed placement is based				
	2. Review and appeal procedures:				
	3. Names of:				
	4. Statement of right to:				
	a. Independent evaluation		X		
	b. Inspect and copy relevant records	X			
	c. Compel attendance at hearing of witnesses				
	5. Exact time and place of hearing	X			
	OTHER:				
HEARING	BEFORE: Impartial hearing officer appointed by local school board		X		
	WHEN: 15-45 days after receipt of request for hearing, unless waived by mutual consent		X		
	CONDUCT OF HEARING:				
	1. Fair and Impartial				
	2. Closed, unless open hearing is requested by: parents		X		
	3. Right of Request				
	a. Compel attendance of witnesses		X		
	b. Representation by: Counsel or other		X		
	c. Present evidence and testimony				
	d. Confront and cross-examine adverse witnesses		X		
	e. Interpreters for deaf and/or fluent in primary language of home				
	f. Attendance by minor child at option of parent				
	4. Burden of proof on: School as to all facts and as to appropriateness of any placement, denial of placement or transfer		X		
	5. Record of hearing: Tape recording shall be available to parent		X		
	SCOPE OF REVIEW:				
	DECISION FOLLOWING HEARING:				
	1. Scope:				
	a. Includes: Findings of fact and conclusions of law		X		
	b. Based solely on evidence and testimony presented at hearing		X		
	2. Form: Certified mail - copy sent to parent	X			
	3. Statement of rights sent with decision:				
	4. Other: Within 30 days after hearing; binding subject to appeal		X		
OTHER DUE PROCESS PROVISIONS	(1)Pending a determination by the hearing officer, the school district shall take no action to place, to deny placement, or to transfer the child. (2)Nothing contained in 22-165 shall be construed to preclude any system of consultations or conference with parents used by school districts re educ. assignment of children thought to be handicapped. Nor shall such consultations or conferences be held in lieu of the due process hearing if one is requested.				

Footnotes

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART I: REFERRAL, EVALUATION AND PLACEMENT.

STATE: Pennsylvania — ADMINISTRATIVE PROVISION: Basic Education Circular 71-75 (Aug. 1, 1975); Basic Education Circular 148 (Oct., 1974)[1]	CITATION	REFERRAL	EVALUATION	PLACEMENT	OTHER
DUE PROCESS PROVISIONS	Cir. 71-75				
NOTICE to parent or guardian — OF: Placement: A. Proposed change in educational status of mentally retarded persons. FORM: Writing, in conference or by certified mail.	§13.61(c)			X	
B. Proposed change in educational status of exceptional persons. FORM: Parent conference.	§13.31			X	
ITEMS ON NOTICE:					
1. Request parent:					
2. Description of:					
a. Proposed or requested action, or decision: Proposed change in educational status including statute or regulation under which action is proposed.				A,B	
b. Reasons for action or decision					
3. Names of persons responsible for:					
4. Specification of tests, instruments or reports: Supporting proposed change in educational status				A,B	
5. When action involves placement or denial of placement:					
a. Description of alternative educational placements				A,B	
b. Reasons why such alternative placements are not appropriate for child					
6. Statement that parents will be informed of results of:					
7. Statement of opportunity/right to:					
a. Obtain independent evaluation				A,B	
(1) At expense of: Parent (exceptional children only)				B	
(2) Names, addresses and telephone numbers of public agencies offering free evaluation				A,B	
b. Meet and consult with school personnel concerning:					
c. Participate in committee meetings regarding:					
(1) Right to representation by:					
8. Statement of right to:					
a. Refuse to consent to: Proposed change in educational status.				A,B	
(1) However, LEA can request hearing to try to obtain approval					
b. Inspect and copy relevant student records				A,B	
c. Appeal					
d. Due process hearing, if parent objects to action				A,B	
9. Description of:					
a. Procedures for objecting to action or appealing decision				A,B	
b. Procedural rights at due process hearing: Present evidence (including expert testimony), call and question adverse witnesses, and be represented by person of own choosing, including legal counsel.				A,B	
c. Procedures for appealing decision resulting from due process hearing					
10. List of community agencies offering ~~legal counsel for indigents~~ assistance.				A,B	
11. Declaration that child's educational status will not be changed without consent of parent, or until due process procedures have been exhausted					
a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by:					
12. Other:					
CONSULTATION with parent or guardian — RE: Notice and explanation of contemplated change in education of mentally retarded or exceptional person.[2] WHEN: Within 10 days of receipt of notice (exceptional person only - as to time of notice.	Cir. 71-75 §13.61 (c) §13.31			A,B	
CONSENT by parent or guardian					
OTHER AREAS of parental involvement or rights					

Footnotes

[1] Circular 148 incorporates the "Order and Injunction" & the "Amended Stipulation" in the PARC decision: PARC v. Commonwealth of Penn., Civil Action No. 71-72 (February 1972).

[2] See above under NOTICE.

STATE: Pennsylvania ADMINISTRATIVE PROVISION: Basic Education Circular 71-75 (August 1, 1975); Basic Education Circular 148 (October, 1974)

STAGES OF APPEAL		CITATION
INITIAL APPEAL	REGULATORY CATEGORY: Hearing initiated by parent to contest proposed change in educational status of mentally retarded or exceptional children, including changes recommended after biennial re-evaluation.	Cir.71-75 §13.61; 13.32 Cir.148 "Amended Stipulation"
SUBSEQUENT APPEAL	OF: Decision of hearing officer re exceptional children only. TO: Secretary of Education.	Cir.71-75 § 13.32
JUDICIAL REVIEW		

DUE PROCESS PROVISIONS		INITIAL APPEAL NOTICE	INITIAL APPEAL PROCEDURE	SUBSEQUENT APPEAL NOTICE	SUBSEQUENT APPEAL PROCEDURE
PRE-HEARING	PRE-HEARING CONFERENCE with school officials				
	NOTICE OF: (See also CONDUCT OF HEARING)				
	1. Specification of tests, instruments or reports on which proposed placement is based				
	2. Review and appeal procedures;				
	3. Names of;				
	4. Statement of right to:				
	a. Independent evaluation				
	b. Inspect and copy relevant records		X		
	c. Compel attendance at hearing of witnesses		X		
	5. Exact time and place of hearing				
	OTHER: No change in educational status pending outcome of hearing except in extraordinary circumstances.[1]				
HEARING	BEFORE: Sec. of Ed. or designee (re mentally retarded) or person assigned by Secretary or designee (re exceptional); but not officer, employee or agent of LEA in which child resides.		X		
	WHEN: 15-30 days following receipt of request for hearing; parent may request reasonable extension, granted upon good cause shown.		X		
	CONDUCT OF HEARING:				
	1. Fair and Impartial				
	2. ~~Closed, unless~~ Open hearing ~~is requested by~~ unless parent specifies closed hearing.		X		
	3. Right of				
	a. Compel attendance of witnesses		X		
	b. Representation by: Person of choosing, including legal counsel.		X		
	c. Present evidence and testimony, including expert testimony.		X		
	d. Confront and cross-examine adverse witnesses		X		
	e. Interpreters for deaf and/or fluent in primary language of home				
	f. Attendance by minor child at option of parent				
	4. Burden of ~~proof on~~ going forward - on school: satisfied by introducing report recommending change (copy to parent with notice); burden then on parents to introduce evidence in support of their position.		X		
	5. Record of hearing: Stenographic or other transcribed record- to be made available to parent or representative.		X		
	SCOPE OF REVIEW: Proposed change in educational status shall be approved only if supported by substantial evidence on whole record of hearing.		X		
	DECISION FOLLOWING HEARING:				
	1. Scope:				
	a. Includes: Findings of fact, conclusions of law.		X		
	b. Based solely on evidence and testimony presented at hearing		X		
	2. Form: Registered mail to parent and representative maximum 20 days after hearing.	X			
	3. Statement of rights sent with decision;				
	4. Other:				
OTHER DUE PROCESS PROVISIONS					

Footnotes [1] The State Director of Special Education, upon written request, may approve change.

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART I: REFERRAL, EVALUATION AND PLACEMENT.

STATE: Rhode Island ADMINISTRATIVE PROVISION: Regulations, Education of Handicapped Children (1976)[1]	CITATION	REFERRAL	EVALUATION	PLACEMENT	OTHER
DUE PROCESS PROVISIONS					
NOTICE to parent or guardian					
OF: Identification, evaluation, or placement, whenever LEA proposes to initiate or change any of these, or refuses to so initiate or change. FORM: Written. WHEN: Prior to action.	IX A.1.a.	X	X	X	
ITEMS ON NOTICE: 1. Request parent:					
2. Description of: a. Proposed or requested action, or decision: re identification, evaluation, or placement		X	X	X	
b. Reasons for action or decision					
3. Names of persons responsible for:					
4. Specification of tests, instruments or reports:					
5. When action involves placement or denial of placement: a. Description of alternative educational placements					
b. Reasons why such alternative placements are not appropriate for child					
6. Statement that parents will be informed of results of:					
7. Statement of opportunity/right to: a. Obtain independent evaluation					
(1) At expense of:					
(2) Names, addresses and telephone numbers of public agencies offering free evaluation					
b. Meet and consult with school personnel concerning:					
c. Participate in committee meetings regarding:					
(1) Right to representation by:					
8. Statement of right to: a. Refuse to consent to:					
(1) However, LEA can request hearing to try to obtain approval					
b. Inspect and copy relevant student records					
c. Appeal					
d. Due process hearing, if parent objects to action					
9. Description of: a. Procedures for objecting to action or appealing decision re any of the above.		X	X	X	
b. Procedural rights ~~at due process hearing~~ afforded.		X	X	X	
c. Procedures for appealing decision resulting from due process hearing					
10. List of community agencies offering legal counsel for indigents					
11. Declaration that child's educational status will not be changed without consent of parent, or until due process procedures have been exhausted ~~10 days will be deemed consent~~ but failure to respond in		X	X	X	
a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by:					
12. Other: Name, address and telephone number of LEA staff person to assist parents in availing themselves of safeguards. Written in parents' spoken language.		X	X	X	
CONSULTATION with parent or guardian I. RE: Recommendation for placement or therapy.[2] II. RE: Opportunity for conference with Supervisor of Special Education, at which time all relevant records will be made available.[2] WHEN: Maximum 10 days after parent requests conference.	§II. A, B or C				
CONSENT by parent or guardian TO: Proposed action.[3]	IX.A.1.a	X	X	X	
OTHER AREAS of parental involvement or rights Opportunity for independent evaluation at parent's expense.[2]	IX.A.1.a.				X

Footnotes

[1] Each LEA shall establish procedures to assure procedural safeguards. Procedure shall include but is not limited to the information set forth in charts, I & II.[2] Parents are not provided notice of this right.

[3] See above under NOTICE.

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART II: APPEAL.

STATE: Rhode Island ADMINISTRATIVE PROVISION: Regulations, Education of Handicapped Children (1976)

STAGES OF APPEAL		CITATION
INITIAL APPEAL	REGULATORY CATEGORY: Appeal to school committee if parents reject outcome of conference with Special Education Supervisor. PROCEDURE: After conference, Supervisor makes written recommendations to superintendent of schools who then reviews it and notifies parents of decision within 10 days after conference. If parents reject superintendent's decision, they may appeal to school committee within 10 days. School committee then holds hearing.	IX.A.1.e
SUBSEQUENT APPEAL	OF: Decision of school committee. TO: As provided in C.16-34 of General Laws of R.I. 1965 as amended.	IX.B.
JUDICIAL REVIEW		

DUE PROCESS PROVISIONS		INITIAL APPEAL		SUBSEQUENT APPEAL	
		NOTICE	PROCEDURE	NOTICE	PROCEDURE
PRE-HEARING	PRE-HEARING CONFERENCE with school officials				
	NOTICE OF: (See also CONDUCT OF HEARING)				
	1. Specification of tests, instruments or reports on which proposed placement is based				
	2. Review and appeal procedures:				
	3. Names of:				
	4. Statement of right to:				
	a. Independent evaluation				
	b. Inspect and copy relevant records				
	c. Compel attendance at hearing of witnesses				
	5. Exact time and place of hearing				
	OTHER:				
HEARING	BEFORE: School committee or its designated hearing officer.		X		
	WHEN: Not later than 30 days after the appeal is requested.		X		
	CONDUCT OF HEARING:				
	1. Fair and Impartial				
	2. Closed, unless open hearing is requested by:				
	3. Right of				
	a. Compel attendance of witnesses				
	b. Representation by: Counsel and by maximum of 3 individuals with special knowledge re handicapped children.		X		
	c. Present evidence and testimony		X		
	d. Confront and cross-examine adverse witnesses		X		
	e. Interpreters for deaf and/or fluent in primary language of home				
	f. Attendance by minor child at option of parent				
	4. Burden of proof on:				
	5. Record of hearing: Verbatim; at cost to party.		X		
	SCOPE OF REVIEW:				
	DECISION FOLLOWING HEARING:				
	1. Scope:				
	a. Includes:				
	b. Based solely on evidence and testimony presented at hearing				
	2. Form: Copy of decision following hearing mailed to parents.	X			
	3. Statement of rights sent with decision: Right to and procedure for appeal.	X			
	4. Other:				
OTHER DUE PROCESS PROVISIONS	I. Pending initial and subsequent appeal, unless SEA or LEA and parents otherwise agree, child shall remain in present placement, unless superintendent determines danger due to this placement. Such determination may be contested by hearing & subsequent appeal as set forth above. II. Parents have absolute right to request conference with local sup't. of ed. at any time they believe decision substantially altering placement of child has been made.				X
Footnotes					

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART I: REFERRAL, EVALUATION AND PLACEMENT.

STATE: South Carolina ADMINISTRATIVE PROVISION: State Plan Amendment for FY75	CITATION	REFERRAL	EVALUATION	PLACEMENT	OTHER
DUE PROCESS PROVISIONS					
NOTICE[1] to parent or guardian					
OF: I. Evaluation					
A. Request permission to evaluate.	I.C.		X		
B. Schedule and information re evaluation. WHEN: Within 10 working days after parental permission for evaluation is obtained.	I.C., II.B.1		X		
C. Results of evaluation. WHEN: Within 10 days after evaluation is completed	II.B.3. II.C.2.		X	X	
OF: II. Placement: proposed change in placement. WHEN: Within 10 days after results of evaluation are presented.					
OF: III. Periodic review of child's educational status. WHEN: At least 5 days prior to review.	II.D.				X
ITEMS ON NOTICE:					
1. Request parent: For written permission to evaluate child			A		
2. Description of:					
a. Proposed or requested action, or decision: Schedule and procedure for evaluation and limits of testing procedures; results of eval. and implications; changes in placement			B,C	X	
b. Reasons for action or decision: Evaluation; proposed education plan			B	X	
3. Names of persons responsible for: Initiating evaluation			B		
4. Specification of tests, instruments or reports: On which proposed placement is based				X	
5. When action involves placement or denial of placement:					
a. Description of alternative educational placements					
b. Reasons why such alternative placements are not appropriate for child				X	
6. Statement that parents will be informed of results of: Evaluation; review (10 days after completion of review)			B		X
7. Statement of opportunity/right to:				X	
a. Obtain Independent evaluation					
(1) At expense of: Public				X	
(2) Names, addresses and telephone numbers of public agencies offering free evaluation				X	
b. Meet and consult with school personnel concerning:					
c. Participate in committee meetings regarding: Development of education plan; review of placement			B		X
(1) Right to representation by:					
8. Statement of right to:					
a. Refuse to consent to: Evaluation; placement - will occur within 10 days of placement notice if parent does not request hearing			B	X	
(1) However, LEA can request hearing to try to obtain approval for evaluation			B		
b. Inspect and copy relevant student records			B	X	
c. Appeal					
d. Due process hearing, if parent objects to action: Proposed placement.				X	
9. Description of:					
a. Procedures for objecting to action or appealing decision: Hearing procedures				X	
b. Procedural rights at due process hearing:					
c. Procedures for appealing decision resulting from due process hearing				X	
10. List of community agencies offering legal counsel for indigents				X	
11. Declaration that child's educational status will not be changed without consent of parent, or until due process procedures have been exhausted			B	X	
a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by Hearing officer				X	
12. Other: a. Right to review evaluation procedures and instruments and description of how evaluation findings will be used; b. Proposed educational plan and method by which developed; c. Rights, procedures and timing of review of placement.			B	b c	
CONSULTATION with parent or guardian					
I. RE: Opportunity to participate in formulation of education plan[2]	II.C.1.				X
II. RE: Explanation of rights of parents and due process procedures.[2] WHEN: Prior to individual evaluation.	II.A.		X		
CONSENT by parent or guardian					
I. TO: Individual Evaluation.[2] WHEN: Prior to evaluation. FORM: Written.	II.A.		X		
II. TO: Placement procedures, including change of placement: "Least Restrictive Alternative" § II.			X		
OTHER AREAS of parental involvement or rights (See also above under NOTICE)					
Further NOTICE: OF: Review of placement: time, procedures for review, and procedures for changing child's educational status or for obtaining alternative education if indicated by review	II.D.				X

Footnotes [1]Form of all notices: written statment in primary language of home, sent by registered mail, and oral communication in primary language of home. §I.C., II.B.I.

[2]See above under NOTICE.

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART II: APPEAL.

STATE: South Carolina ADMINISTRATIVE PROVISION: State Plan Amendment for FY75

STAGES OF APPEAL		CITATION
INITIAL APPEAL	REGULATORY CATEGORY: Requested by: A. Parents, concerning proposed change in educational status of child, proposed placement in special education program, denial of such placement, or periodic review of special education program. B. LEA, where a parent fails to respond within 10 days to the LEA's attempts by means of registered mail, telephone, home visit, etc., to obtain consent for evaluation. PROCEDURE: Hearing. (See below).	"Due Process" III.A-D.
SUBSEQUENT APPEAL		
JUDICIAL REVIEW	OF: Decision of hearing officer	"Due Process" III.D.

DUE PROCESS PROVISIONS		INITIAL APPEAL		SUBSEQUENT APPEAL	
		NOTICE	PROCEDURE	NOTICE	PROCEDURE
PRE-HEARING	PRE-HEARING CONFERENCE with school officials				
	NOTICE OF: (See also CONDUCT OF HEARING)				
	1. Specification of tests, instruments or reports on which proposed placement is based				
	2. Review and appeal procedures: and detailed description of rights at hearing; also right to judicial review of hearing decision.	X			
	3. Names of:				
	4. Statement of right to:				
	a. Independent evaluation				
	b. Inspect and copy relevant records	X	X		
	c. Compel attendance at hearing of witnesses				
	5. Exact time and place of hearing	X			
	OTHER: Notice of 1. List of legal aid agencies and 2. Copy of original notice requesting permission to evaluate.	X			
HEARING	BEFORE: Impartial hearing officer: person or tribunal assigned by LEA. Unbiased, disinterested, and independent of LEA.[1]		X		
	WHEN: Time and place convenient to parent.		X		
	CONDUCT OF HEARING:				
	1. Fair and impartial		X		
	2. Closed, unless open hearing is requested by: Parent		X		
	3. Right of				
	a. Compel attendance of witnesses		X		
	b. Representation by: Legal counsel		X		
	c. Present evidence and testimony		X		
	d. Confront and cross-examine adverse witnesses		X		
	e. Interpreters for deaf and/or fluent in primary language of home		X		
	f. Attendance by minor child at option of parent: However, hearing officer may exclude if child's welfare would be jeopardized.		X		
	4. Burden of proof on: LEA as to appropriateness and adequacy of proposed evaluation procedures		X		
	5. Record of hearing: Verbatim. Copy provided on request, at expense of LEA.		X		
	SCOPE OF REVIEW:				
	DECISION FOLLOWING HEARING:				
	1. Scope: Approve or disapprove proposed evaluation or placement.		X		
	a. Includes: Findings of facts, conclusions and reasons for each.		X		
	b. Based solely on evidence and testimony presented at hearing		X		
	2. Form: Writing. Sent by registered mail to parents and representatives	X			
	3. Statement of rights sent with decision; Judicial appeal	X			
	4. Other: Within 5 days after hearing; Binding subject to judicial appeal Summary of hearing to be made available, including all materials requested.		X		
OTHER DUE PROCESS PROVISIONS	Child shall remain in present educational program until hearing. In emergency situations, however, where the health and safety of the child or of other persons would be endangered by continuing present program, change in program may be made earlier by written order of hearing officer.				

Footnotes [1]Appendix B also specific procedures for LEA selection of hearing officers.

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART I: REFERRAL, EVALUATION AND PLACEMENT.

STATE: South Dakota DUE PROCESS PROVISIONS	ADMINISTRATIVE PROVISION: Rules and Regulations of Div. of Elementary and Secondary Ed. Section for Exceptional Children (July 1, 1974); Sample "Procedural Safeguards" adopted by State Ed. Agency in response to federal Education of the Handicapped Act.	CITATION	REFERRAL	EVALUATION	PLACEMENT	OTHER
NOTICE to parent or guardian	OF: I. Screening: questionnaire regarding initial screening. II. Evaluation: request for permission to test. FORM: Written, in English and in primary language of home, and oral in primary language. III. Placement: proposed change in program or when parent's request for a different placement is denied. FORM: Orally and by certified mail.	Rules § 13H.203 Safeguards § II.3.1. Safeguards § II.4	X	X	X	
	ITEMS ON NOTICE: 1. Request parent: Re screening-to provide medical, physical and educational information re child; re testing - for permission to test.		X	X		
	2. Description of: a. Proposed or requested action, or decision: Change in program or denial of parent's request for different placement.				X	
	b. Reasons for action or decision: Proposed testing.			X		
	3 Names of persons responsible for: Initiating process leading to testing.			X		
	4. Specification of tests, instruments or reports: On which proposed placement is based.				X	
	5. When action involves placement or denial of placement: a. Description of alternative educational placements				X	
	b. Reasons why such alternative placements are not appropriate for child				X	
	6. Statement that parents will be informed of results of: Evaluation.			X		
	7. Statement of opportunity right to: a. Obtain independent evaluation				X	
	(1) At expense of: Public.				X	
	(2) Names, addresses and telephone numbers of public agencies offering free evaluation				X	
	b. Meet and consult with school personnel concerning:					
	c. Participate in committee meetings regarding:					
	(1) Right to representation by:					
	8. Statement of right to: a. Refuse to consent to: Evaluation.			X		
	(1) However, LEA can request hearing to try to obtain approval to test.			X		
	b. Inspect and copy relevant student records			X	X	
	c. Appeal					
	d. Due process hearing, if parent objects to action - proposed change or denial of parent's request for new placement.				X	
	9. Description of: a. Procedures for objecting to action or appealing decision Within 10 days of receipt of this notice.				X	
	b. Procedural rights at due process hearing: All must be described.				X	
	c. Procedures for appealing decision resulting from due process hearing				X	
	10. List of community agencies offering legal counsel for indigents				X	
	11. Declaration that child's educational status will not be changed without consent of parent, or until due process procedures have been exhausted pending testing and hearing			X	X	
	a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by: Hearing examiner.				X	
	12. Other:					
CONSULTATION with parent or guardian	I. RE: Potential problems of child based on initial screening.[1] WHEN: Annually.	Rules §II H. 203. "Safeguards" §II.B.-2.	X	X		
	II. RE: LEA attempt to obtain parental permission for evaluation, following initial refusal.					
CONSENT by parent or guardian	I. TO: Formal screening (testing) and evaluation.[2] WHEN: In advance of testing. FORM: Written.	Rules §13. H. 204, 205, 301	X		X	
	II. TO: Placement.[2] WHEN: Prior to placement. FORM: Written.					
OTHER AREAS of parental involvement or rights						

Footnotes
1 Parents are not provided notice of this right.
2 See above under NOTICE.

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART II: APPEAL.

STATE : South Dakota ADMINISTRATIVE PROVISION: "Procedural Safeguards" adopted by State Education Agency in response to the federal Education of the Handicapped Act.

STAGES OF APPEAL		CITATION
INITIAL APPEAL	REGULATORY CATEGORY: Appeal by: A. Parents objecting to proposed or requested action of LEA re placement. B. LEA, of parents' 1. Refusal to give permission for evaluation or 2. Failure to respond to LEA's attempts to obtain consent for evaluation. PROCEDURE: Hearing. See below.	§II.B.
SUBSEQUENT APPEAL	OF: Decision of hearing officer. HOW INITIATED: Request of LEA; parents' rejection of hearing officer's decision is automatic appeal. PROCEDURE: In accordance with state administrative procedure act. TO:State board of education or its impartial designee. Any such designee must meet qualifications required of hearing officers.	§II.B.8.
JUDICIAL REVIEW	OF: Decision of state board of education or its impartial designee. TO: State court.	§II.B.8.

DUE PROCESS PROVISIONS		INITIAL APPEAL		SUBSEQUENT APPEAL	
		NOTICE	PROCEDURE	NOTICE	PROCEDURE
PRE-HEARING	PRE-HEARING CONFERENCE with school officials				
	NOTICE OF: (See also CONDUCT OF HEARING)				
	1. Specification of tests, instruments or reports on which proposed placement is based				
	2. Review and appeal procedures:				
	3. Names of:				
	4. Statement of right to:				
	a. Independent evaluation - opportunity to obtain.		X		
	b. Inspect and copy relevant records	X	X		
	c. Compel attendance at hearing of witnesses -		X		
	5. Exact time and place of hearing	X			
	OTHER: Steps should be taken to assure child will remain in present placement pending decision following hearing, unless emergency.		X		
HEARING	BEFORE: Impartial hearing officer: person or tribunal. Must be unbiased, disinterested and independent of LEA , should be employed by SEA.		X		
	WHEN: Time and place reasonably convenient for parents.		X		
	CONDUCT OF HEARING:				
	1. Fair and Impartial		X		
	2. Closed, unless open hearing is requested by : Parents.		X		
	3. Right of				
	a. Compel attendance of witnesses				
	b. Representation by: Including but not limited to legal counsel or other professional persons.		X		
	c. Present evidence and testimony		X		
	d. Confront and cross-examine adverse witnesses		X		
	e. Interpreters for deaf and/or fluent in primary language of home		X		
	f. Attendance by minor child at option of parent except hearing officer may exclude child if attendance would be harmful.		X		
	4. Burden of proof on: See next page.		X		
	5. Record of hearing: Upon request by parents or LEA, copy of tape recording or other verbatim record should be provided.		X		
	SCOPE OF REVIEW: Adequacy and appropriateness of educational program.		X		
	DECISION FOLLOWING HEARING:				
	1. Scope: Should include statement regarding adequacy and appropriateness of education program proposed.		X		
	a. Includes: Findings of fact, conclusions, and reasons for each.		X		
	b. Based solely on evidence and testimony presented at hearing		X		
	2. Form: Writing, by certified mail to parents, LEA and representatives.	X			
	3. Statement of rights sent with decision: Procedures for appealing decision.	X	X		
	4. Other: Summary of proceedings should be made available including materials or statements requested by parties to appear on record.		X		
OTHER DUE PROCESS PROVISIONS					

DUE PROCESS PROVISIONS

HEARING (Continued)

4. Burden of proof on: LEA
A. Where parent initiated hearing, the burden of proof is as to the appropriateness of any proposed placement, as to why more normalized placements could not adequately and appropriately serve the child's educational needs, and as to the adequacy and appropriatenss of any test or evaluation procedure .Where LEA initiated hearing because (1) parents refused to give consent to evaluation, the burden of proof is on the LEA to demonstrate that the continued placement of the child is so dangerous to his/her health or safety or so disruptive to the program for the other children that the initiation of the evaluation procedure is justified as the first step to a special program placement; (2) parents failed to respond to LEA's attempts to obtain consent to evaluation, in order for LEA to prevail, it must: (a) demonstrate with documentation that it has repeatedly attempted to contact the parent through efforts that were reasonably likely to succeed; and (b) establish with facts about the child's performance in his/her present placement that there is reasonable likelihood that the child will be found to have special needs.

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART I: REFERRAL, EVALUATION AND PLACEMENT.

STATE: Tennessee	ADMINISTRATIVE PROVISION: Rules, Regulations, Policies and Guidelines Governing the Development of Programs and Services for the Handicapped 1975-76 (June, 1975)	CITATION	REFERRAL	EVALUATION	PLACEMENT	OTHER
DUE PROCESS PROVISIONS						
NOTICE to parent or guardian	OF: Placement: Recommendation for special education, right to review, procedure for consent or requesting review.	Part II, §5			X	
	FORM: If English is not the primary language of the home or guardian, or if there is any other reason to believe that written notice of pupil placement recommendations may not be understood by the parent, the local school system shall take such steps to assure communication with the parents or guardians on this matter.	Part III § 3-5				
	ITEMS ON NOTICE:					
	1. Request parent:					
	2. Description of:					
	a. Proposed or requested action, or decision: Recommend special education, corrective and/or supportive services, change or denial of service				X	
	b. Reasons for action or decision: Recommended assignment				X	
	3. Names of persons responsible for:					
	4. Specification of tests, instruments or reports:					
	5. When action involves placement or denial of placement:					
	a. Description of alternative educational placements				X	
	b. Reasons why such alternative placements are not appropriate for child					
	6. Statement that parents will be informed of results of:					
	7. Statement of opportunity/right to:					
	a. Obtain independent evaluation					
	(1) At expense of:					
	(2) Names, addresses and telephone numbers of public agencies offering free evaluation					
	b. Meet and consult with school personnel concerning:					
	c. Participate in committee meetings regarding:					
	(1) Right to representation by:					
	8. Statement of right to:					
	a. ~~Refuse to consent to~~: Review basis for proposed placement.				X	
	(1) However, LEA can request hearing to try to obtain approval					
	b. Inspect and copy relevant student records					
	c. Appeal					
	d. Due process hearing, if parent objects to action					
	9. Description of:					
	a. Procedures for objecting to action or appealing decision or giving consent				X	
	b. Procedural rights at due process hearing:					
	c. Procedures for appealing decision resulting from due process hearing					
	10. List of community agencies offering legal counsel for indigents					
	11. Declaration that child's educational status will not be changed without consent of parent, or until due process procedures have been exhausted					
	a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by:					
	12. Other:					
CONSULTATION with parent or guardian	I. RE: Evaluation- Optional parental involvement in assessment process.[1]	Part III § 2		X		
	II. RE: Placement. A. Proposed placement which parent feels is inappropriate.[2] B. Securing written parental confirmation of proposed assignment.[2]	Part II §5			X	
CONSENT by parent or guardian	I. TO: Individual assessment procedures.[1] FORM: Written.	Part II § 5a.		X		
	II. TO: New placement or change in placement.[2] FORM: Written.	Part III			X	
OTHER AREAS of parental involvement or rights	No new pupil assignment shall be made without parental consent except that failure to return Parent Response Form will constitute forfeit of right to review hearing & will signify acceptance of recommendation of school system. Such implied consent shall be used as basis for placement only when written evidence is on file indicating parents have received & understood notification.					
Footnotes	1 Parents are not provided notice of this right. 2 See above under NOTICE.	Part III-Guidelines to Insure Due Process §§1,2,6				

STATE: Tennessee — ADMINISTRATIVE PROVISION: Rules, Regulations, Policies and Guidelines Governing the Development of Programs and Services for the Handicapped 1975-76 (June 1975)

STAGES OF APPEAL		CITATION
INITIAL APPEAL	GUIDELINES CATEGORY: Review of decision where parent alleges that child has been or is about to be: 1) Denied entry or continuance in a program of special ed. appropriate to his condition and needs; 2) placed in a special ed. program which is inappropriate to his condition and needs; 3) denied educational services because no suitable program of education or related services is maintained; 4) provided with special ed. or other education which is insufficient in quantity to satisfy requirements of law; 5) provided with special ed. or other ed. to which he is entitled only by units of gov't. or in situations which are not those having primary responsibility for providing services in question; 6) assigned to program of special ed. when he is not handicapped.	Part III Manual Due Process Hearing
SUBSEQUENT APPEAL	HOW INITIATED: Written request. PROCEDURE: Hearing. See below.	
JUDICIAL REVIEW	The determination of a hearing officer shall be subject to judicial review in the manner provided for judicial review of other matters of the local school district.	Part III Manual

DUE PROCESS PROVISIONS		INITIAL APPEAL		SUBSEQUENT APPEAL	
		NOTICE	PROCEDURE	NOTICE	PROCEDURE
PRE-HEARING	PRE-HEARING CONFERENCE with school officials				
	NOTICE OF: (See also CONDUCT OF HEARING)				
	1. Specification of tests, instruments or reports on which proposed placement is based				
	2. Review and appeal procedures:				
	3. Names of:				
	4. Statement of right to:				
	a. Independent evaluation - parent may request.		X		
	b. Inspect and copy relevant records - school must make available.		X		
	c. Compel attendance at hearing of witnesses - parent is requested to inform school of names of witnesses.	X			
	5. Exact time and place of hearing - superintendent will contact parent on this subject.	X			
	OTHER: Request for a hearing stays recommended placement until results are determined, unless parent and school mutually agree in writing (Continued)				
HEARING	BEFORE: Hearing officer selected by Right to Education Office and possessing specified qualifications.		X		
	WHEN: 15-30 days from receipt by parent of notice of placement or request for hearing.		X		
	CONDUCT OF HEARING:				
	1. Fair and Impartial				
	2. Closed, unless open hearing is requested by: Parent.		X		
	3. Right of				
	a. Compel attendance of witnesses		X		
	b. Representation by: Counsel,		X		
	c. Present evidence and testimony. Copy of evidence must be provided hearing officer at time of presentation.		X		
	d. Confront and cross-examine adverse witnesses		X		
	e. Interpreters for deaf and/or fluent in primary language of home				
	f. Attendance by minor child ~~at option of parent~~		X		
	4. ~~Burden of proof on~~: Rules of evidence do not apply. Hearing officer must admit all evidence deemed material, competent, relevant and not unduly repetitious.		X		
	5. Record of hearing: Right to transcript.		X		
	SCOPE OF REVIEW: See next page.		X		
	DECISION FOLLOWING HEARING:				
	1. Scope: An affirmance or denial of placement, or a recommendation for alternative procedures to meet educational needs, which may include further evaluation.		X		
	a. Includes: Reasons for decision.	X	X		
	b. Based solely on evidence and testimony presented at hearing		X		
	2. Form: Certified mail within 4 days of completion of hearing.	X			
	3. Statement of rights sent with decision:				
	4. Other:				
OTHER DUE PROCESS PROVISIONS	If hearing officer feels that insufficient material precludes decision-making, he may continue hearing or reschedule it. He should in this case indicate to both parties the type of information or materials he is lacking. He may, if the parties so stipulate, request additional written evidence or				
Footnotes	briefs, prior to rendering his decision.				

DUE PROCESS PROVISIONS

PRE-HEARING

OTHER: (Continued) to continue placement. Placement may be made notwithstanding parental objections where there is danger to health or safety.

HEARING

SCOPE OF REVIEW: The hearing shall seek to establish any or all of the following:

(1) that the child has needs which require special education, corrective and/or supportive services;

(2) that the evaluation procedures utilized in determining the child's needs have been appropriate in nature and degree;

(3) that the diagnostic profile of the child on which the placement decision was based is substantially verified;

(4) that the proposed placement is directly related to the child's educational needs and the objectives established and is sufficient in quality and quantity to satisfy such needs;

(5) that the proposed program and services are to be provided at no expense to the child, parent, or guardian;

(6) that the child has been denied entry or continuance in a program of special education appropriate to his condition and needs;

(7) that the services offered the child be comparable to those offered a child who does not have a handicap.

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART I: REFERRAL, EVALUATION AND PLACEMENT.

STATE: Texas — ADMINISTRATIVE PROVISION: "Policy Change Notice No. 9": Policy Changes in Administrative Guide and Handbook for Special Education, Bulletin 711 (May 15, 1975)	CITATION	REFERRAL	EVALUATION	PLACEMENT	OTHER
DUE PROCESS PROVISIONS					
NOTICE to parent or guardian					
I. OF: Screening or referral activities. FORM: Written and oral, in language best understood by parents.	§2.5a	X			
II. OF: School district's plan of operation, including notice of permission for assessment or placement. FORM: Written and oral, in language best understood by parents.	§2.5a		X	X	
ITEMS ON NOTICE:					
1. Request parent: Permission to test or place or to release information from diagnostic sources to school.			X	X	
2. Description of: a. Proposed or requested action, or decision: Screening or referral activities.		X			
b. Reasons for action or decision					
3. Names of persons responsible for:					
4. Specification of tests, instruments or reports:					
5. When action involves placement or denial of placement: a. Description of alternative educational placements					
b. Reasons why such alternative placements are not appropriate for child					
6. Statement that parents will be informed of results of:					
7. Statement of opportunity/right to: a. Obtain independent evaluation					
(1) At expense of:					
(2) Names, addresses and telephone numbers of public agencies offering free evaluation					
b. Meet and consult with school personnel concerning:					
c. Participate in committee meetings regarding:					
(1) Right to representation by:					
8. Statement of right to: a. Refuse to consent to: Use of pupil information by other schools and agencies			X	X	
(1) However, LEA can request hearing to try to obtain approval					
b. Inspect and copy relevant student records			X	X	
c. Appeal					
d. Due process hearing, if parent objects to action					
9. Description of: a. Procedures for objecting to action or appealing decision: According to State Board of Education Policy and Administrative Series 7100, Hearings and Appeals			X	X	
b. Procedural rights at due process hearing:					
c. Procedures for appealing decision resulting from due process hearing					
10. List of community agencies offering legal counsel for indigents					
11. Declaration that child's educational status will not be changed without consent of parent, or until due process procedures have been exhausted					
a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by:					
12. Other:					
CONSULTATION with parent or guardian					
CONSENT by parent or guardian I. TO: Comprehensive Assessment.[1] II. TO: Consideration for placement.[1] III. TO: Release of pupil information from various diagnostic sources to school.[1]	§2.5a		X X	X	
OTHER AREAS of parental involvement or rights					

Footnotes [1] See above under NOTICE.

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART II: APPEAL.

STATE: Texas — ADMINISTRATIVE PROVISION: State Board of Education Policy and Administrative Procedure Series 7100, Hearings and Appeals[1] (undated)

STAGES OF APPEAL		CITATION
INITIAL APPEAL	CATEGORY: Appeal of grievances relating to special education services. PROCEDURE: Hearing.	§ 7102
SUBSEQUENT APPEAL	SEQUENCE OF APPEAL: For all common school districts, rural high school districts, and independent school districts with fewer than 500 scholastics, the proper route of appeal is: (1) from district board of trustees to county superintendent; (2) from county superintendent to county school trustees; (3) from county school trustees to either: the Commissioner of Education or proper court; (4) from Commissioner of Education to State Board of Education; and (continued)	§ 7103
JUDICIAL REVIEW	According to state laws. Any party filing suit should inform the Commissioner of Education as to court, filing date and final decision.	§ 7103

DUE PROCESS PROVISIONS		INITIAL APPEAL NOTICE	INITIAL APPEAL PROCEDURE	SUBSEQUENT APPEAL NOTICE	SUBSEQUENT APPEAL PROCEDURE
PRE-HEARING	PRE-HEARING CONFERENCE with school officials				
	NOTICE OF: (See also CONDUCT OF HEARING)				
	1. Specification of tests, instruments or reports on which proposed placement is based				
	2. Review and appeal procedures:				
	3. Names of:				
	4. Statement of right to:				
	a. Independent evaluation				
	b. Inspect and copy relevant records				
	c. Compel attendance at hearing of witnesses				
	5. Exact time and place of hearing: Date may be postponed by agreement of parties with consent of board	X		X	
	OTHER:				
HEARING	BEFORE: Board of trustees of school district		X		
	WHEN: 15-30 days from filing of request for hearing (initial); 15-45 days after receipt of record of appeal (subsequent).		X		X
	CONDUCT OF HEARING:				
	1. Fair and impartial				
	2. Closed, unless open hearing is requested by :				
	3. Right of				
	a. Compel attendance of witnesses				
	b. Representation by: Counsel		X		X
	c. Present evidence and testimony : Copies of all briefs, notices and requests shall be furnished opposing parties.		X		X
	d. Confront and cross-examine adverse witnesses		X		
	e. Interpreters for deaf and/or fluent in primary language of home				
	f. Attendance by minor child at option of parent				
	4. Burden of proof on:				
	5. Record of hearing: On request, shall be reduced to writing, but requesting party may have to bear costs.		X		
	SCOPE OF REVIEW:				
	DECISION FOLLOWING HEARING:				
	1. Scope:				
	a. Includes: (appellate decision): Certified excerpts of minutes of relevant State Board of Education meeting				X
	b. Based solely on evidence and testimony presented at hearing				
	2. Form: Oral announcement in presence of aggrieved party or counsel at hearing, or written communication.	X			
	3. Statement of rights sent with decision:				
	4. Other: Within reasonable time (appellate decision)				X
OTHER DUE PROCESS PROVISIONS					

Footnotes [1] Governs grievances relating to special educational services, but is not limited to grievances on this subject.

SUBSEQUENT APPEAL (Continued)

(5) from the State Board of Education to court.

For all independent school districts with 500 or more scholastics, the proper route of appeal is the same but without county superintendent or county school trustees.

PROCEDURE: May be with or without hearing.

1. Appellate hearing: Any interested party to the appeal may file a typewritten, mimeographed, or printed brief in at least five copies; may be represented in person or by counsel of his own choosing; may present reasonable oral argument and be afforded an opportunity to present additional documentary or sworn oral testimony which has not been previously introduced at some previous hearing or appeal, provided that no additional testimony or documentary evidence may be presented to the State Board of Education.

2. Appeal without hearing: Appeals to the State Board of Education shall be considered on the record, briefs, and oral arguments only. In appeals to the State Board of Education, if the appellants desire to submit written briefs they must do so within 25 days from the date Notice of Appeal was filed with the Commissioner of Education. Reply briefs may be submitted within 35 days from the date Notice of Appeal was filed with the Commissioner of Education. If either party desires to make an oral argument before the State Board of Education, he makes a request for the same not less than 10 days prior to the date set for the hearing before the State Board of Education.

Where additional testimony is received upon any appeal, either party, upon payment of the cost thereof, is entitled to a written record of the testimony.

REHEARINGS AND SUBSEQUENT REMEDIES: After a decision of the Commissioner of Education has been rendered, the losing party may file within 30 days, and not thereafter, a motion for rehearing which the Commissioner may grant upon good cause shown. However, such motion for rehearing shall not be a prerequisite for an appeal to the State Board of Education from the decision of the Commissioner of Education. If such motion for rehearing is granted by the Commissioner of Education, rehearing shall be conducted as set forth previously.

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART I: REFERRAL, EVALUATION AND PLACEMENT.

STATE: Utah	ADMINISTRATIVE PROVISION: Rules and Regulations for Programs for the Handicapped (Revised Dec. 19, 1973)	CITATION	REFERRAL	EVALUATION	PLACEMENT	OTHER
DUE PROCESS PROVISIONS						
NOTICE to parent or guardian	OF:					
	ITEMS ON NOTICE:					
	1. Request parent:					
	2. Description of:					
	a. Proposed or requested action, or decision:					
	b. Reasons for action or decision					
	3. Names of persons responsible for:					
	4. Specification of tests, instruments or reports:					
	5. When action involves placement or denial of placement:					
	a. Description of alternative educational placements					
	b. Reasons why such alternative placements are not appropriate for child					
	6. Statement that parents will be informed of results of:					
	7. Statement of opportunity/right to:					
	a. Obtain independent evaluation					
	(1) At expense of:					
	(2) Names, addresses and telephone numbers of public agencies offering free evaluation					
	b. Meet and consult with school personnel concerning:					
	c. Participate in committee meetings regarding:					
	(1) Right to representation by:					
	8. Statement of right to:					
	a. Refuse to consent to:					
	(1) However, LEA can request hearing to try to obtain approval					
	b. Inspect and copy relevant student records					
	c. Appeal					
	d. Due process hearing, if parent objects to action					
	9. Description of:					
	a. Procedures for objecting to action or appealing decision					
	b. Procedural rights at due process hearing:					
	c. Procedures for appealing decision resulting from due process hearing					
	10. List of community agencies offering legal counsel for indigents					
	11. Declaration that child's educational status will not be changed without consent of parent, or until due process procedures have been exhausted					
	a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by:					
	12. Other:					
CONSULTATION with parent or guardian						
CONSENT by parent or guardian	I. TO: Evaluation[1] FORM: Written			X		
	II. TO: Placement[1] FORM: Written				X	
OTHER AREAS of parental involvement or rights						

Footnotes [1] Parents are not provided notice of this right. NOTE: Utah has no due process provisions at the appeal stage. Thus, there is no Chart PART II, for Utah.

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART I: REFERRAL, EVALUATION AND PLACEMENT.

STATE: Vermont	ADMINISTRATIVE PROVISION: The Right to an Education for All Children Including Appeal Procedures (pamphlet, 1975)	CITATION	REFERRAL	EVALUATION	PLACEMENT	OTHER
DUE PROCESS PROVISIONS						
NOTICE to parent or guardian	OF: No specific notice provisions are set forth, but it is stated that "All school boards ..have the responsibility to...effect a clear policy of due process and confidentiality".	Rights & Responsibilities of School Boards				X
	ITEMS ON NOTICE:					
	1. Request parent:					
	2. Description of:					
	a. Proposed or requested action, or decision:					
	b. Reasons for action or decision					
	3. Names of persons responsible for:					
	4. Specification of tests, instruments or reports:					
	5. When action involves placement or denial of placement:					
	a. Description of alternative educational placements					
	b. Reasons why such alternative placements are not appropriate for child					
	6. Statement that parents will be informed of results of:					
	7. Statement of opportunity/right to:					
	a. Obtain independent evaluation					
	(1) At expense of:					
	(2) Names, addresses and telephone numbers of public agencies offering free evaluation					
	b. Meet and consult with school personnel concerning:					
	c. Participate in committee meetings regarding:					
	(1) Right to representation by:					
	8. Statement of right to:					
	a. Refuse to consent to:					
	(1) However, LEA can request hearing to try to obtain approval					
	b. Inspect and copy relevant student records					
	c. Appeal					
	d. Due process hearing, if parent objects to action					
	9. Description of:					
	a. Procedures for objecting to action or appealing decision					X
	b. Procedural rights at due process hearing:					
	c. Procedures for appealing decision resulting from due process hearing					
	10. List of community agencies offering legal counsel for indigents					
	11. Declaration that child's educational status will not be changed without consent of parent, or until due process procedures have been exhausted					
	a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by:					
	12. Other:					
CONSULTATION with parent or guardian	I. RE: Resolving grievance.[1] Request of parent or school official, either of whom may invite appropriate people to be present. II. RE: Informal meeting requested by parent or school official to be convened by Commissioner of Education.[1] Appropriate people may be invited.	How to-First Step			X X	
CONSENT by parent or guardian	TO: Major change in educational program.[1]	Rights & Responsibility			X	
OTHER AREAS of parental involvement or rights						
Footnotes	[1] Parents are not provided notice of this right.					

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART II: APPEAL.

STATE: Vermont ADMINISTRATIVE PROVISION: The Right to an Education for All Children Including Appeal Procedures (pamphlet, 1975).

STAGES OF APPEAL		CITATION
INITIAL APPEAL	CATEGORY: Appeal of grievance. PROCEDURE: Formal due process hearing.	How to-Third Step
SUBSEQUENT APPEAL	OF: Decision of hearing officer. TO: State Board of Education. PROCEDURE: State Board may use facts previously established, hear new evidence, and make an independent ruling.	How to-Fourth Step
JUDICIAL REVIEW	OF: Decision of State Board of Education. TO: Court.	How to-Fifth Step

DUE PROCESS PROVISIONS		INITIAL APPEAL NOTICE	INITIAL APPEAL PROCEDURE	SUBSEQUENT APPEAL NOTICE	SUBSEQUENT APPEAL PROCEDURE
PRE-HEARING	PRE-HEARING CONFERENCE with school officials				
	NOTICE OF: (See also CONDUCT OF HEARING)				
	1. Specification of tests, instruments or reports on which proposed placement is based				
	2. Review and appeal procedures:				
	3. Names of:				
	4. Statement of right to:				
	a. Independent evaluation				
	b. Inspect and copy relevant records				
	c. Compel attendance at hearing of witnesses				
	5. Exact time and place of hearing				
	OTHER:				
HEARING	BEFORE: Impartial hearing officer appointed by Commissioner of Education.		X		
	WHEN:				
	CONDUCT OF HEARING:				
	1. Fair and Impartial				
	2. Closed, unless open hearing is requested by:				
	3. Right of				
	a. Compel attendance of witnesses				
	b. Representation by: Counsel.		X		
	c. Present evidence and testimony				
	d. Confront and cross-examine adverse witnesses				
	e. Interpreters for deaf and/or fluent in primary language of home				
	f. Attendance by minor child at option of parent				
	4. Burden of proof on:				
	5. Record of hearing:				
	SCOPE OF REVIEW:				
	DECISION FOLLOWING HEARING:				
	1. Scope:				
	a. Includes:				
	b. Based solely on evidence and testimony presented at hearing				
	2. Form:				
	3. Statement of rights sent with decision:				
	4. Other:				
OTHER DUE PROCESS PROVISIONS					

Footnotes

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART I: REFERRAL, EVALUATION AND PLACEMENT.

STATE: Virginia DUE PROCESS PROVISIONS	ADMINISTRATIVE PROVISION: Board of Education Regulations for Education of Handicapped Children. Chapter IV (May 1975); Rules and Regulations for Tuition Assistance for Ed. of Handicapped Children in Virginia Attending Private Nonsectarian Schools for the Handicapped, 1975-76 (March 1975)	CITATION	REFERRAL	EVALUATION	PLACEMENT	OTHER
NOTICE[1] to parent or guardian	I. OF: Evaluation. A. Request parent's permission to test. B. School's decision on parent's request for testing.	Regulations 4.1.3		X		
	II. Placement. A. Request parent's permission for placement. B. School's decision on parent's request for different placement.	Reg. 4.2.3.		X		
	III. Eligibility status of child whose parents have applied for tuition assistance in private schools.	Rules, Tuition Assistance E.			X	X
	ITEMS ON NOTICE:					
	1. Request parent: Permission to test; permission for placement.			A	A	
	2. Description of:					
	a. Proposed or requested action, or decision: Proposed evaluation or placement; decision re parent's request for testing or placement.			A,B	A,B	
	b. Reasons for action or decision: Requesting evaluation or placement, denial of request to test or placement.			A,B	A,B	
	3. Names of persons responsible for: Requesting evaluation or placement; recommending denial of parent's request to test for different placement.			A,B	A,B	
	4. Specification of tests, instruments or reports: On which proposed placement is based.				A	
	5. When action involves placement or denial of placement:					
	a. Description of alternative educational placements					
	b. Reasons why such alternative placements are not appropriate for child					
	6. Statement that parents will be informed of results of: Evaluation.			A		
	7. Statement of opportunity/right to:					
	a. Obtain independent evaluation					
	(1) At expense of:					
	(2) Names, addresses and telephone numbers of public agencies offering free evaluation					
	b. Meet and consult with school personnel concerning:					
	c. Participate in committee meetings regarding:					
	(1) Right to representation by:					
	8. Statement of right to:					
	a. Refuse to consent to: Evaluation; proposed placement.			A	A	
	(1) However, LEA can ~~request hearing~~ appeal to try to obtain approval			A	A	
	b. Inspect and copy relevant student records			A,B	A,B	
	c. Appeal denial of parent's request to test or for different placement.			B	B	
	d. Due process hearing, if parent objects to action					
	9. Description of:					
	a. Procedures for objecting to action or appealing decision: Written notice to local school board within 10 days following notice of denial of request to test or placement.			B	B	
	b. Procedural rights at due process hearing:					
	c. Procedures for appealing decision resulting from due process hearing					
	10. List of community agencies offering legal counsel for indigents					
	11. Declaration that evaluation procedures & placement change will not occur w/out consent of parent, or until due process procedures have been exhausted			A	A	
	a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by:					
	12. Other: Eligibility status of child whose parents have applied for tuition assistance in private schools.					X
CONSULTATION with parent or guardian	RE: Attempt to obtain parental permission to evaluate, after initial refusal.[2]	§4.1.3/ 2.1.3		X		
CONSENT by parent or guardian	I. TO: Individual evaluation procedures (formal testing and assessment).[3] WHEN: Prior to testing. FORM: Written.	§4.1.3/ 2.1		X		
	II. TO: Additional evaluation of child requesting tuition assistance for private school placement.					X
OTHER AREAS of parental involvement or rights	III. TO: Program change. FORM: Written.	Rules, Tuition Assist. 4.2.3/2.1			X	

Footnotes [1] FORM of notices: Written statements in English, & written & oral communication in primary language of parent's home. [2] Parents are not provided notice of this conference. [3] See above under NOTICE.

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART II: APPEAL.

STATE: Virginia — ADMINISTRATIVE PROVISION: Board of Education Regulations for Education of Handicapped Children, Chapter IV (May 1975); Rules and Regulations for Tuition Assistance for Education of Handicapped, 1975-76 (March 1975)

STAGES OF APPEAL		CITATION
INITIAL APPEAL	REGULATORY CATEGORY: Appeal to local school board 1) By local school division superintendent where a) Parent refused to give consent to proposed evaluation or b) Parent failed to respond w/in 20 days to attempts of local school division to notify parent to obtain consent. 2) By parent where a) School denied parent's request for testing b) School denied parent's request for a different placement; c) Local school board authorized school to proceed with evaluation after parent failed to respond to school's attempt to obtain consent, or d) Local school division superintendent made decision regarding eligibility status of child for tuition assistance for private school placement & parent objects to decision. PROCEDURE: Hearing (See below).	Reg. §4.1.3/ 2.1; 2.2.2 Rules for Tuition Assistance
SUBSEQUENT APPEAL	OF: Decision of local school board. TO: State Superintendent of Public Instruction. HOW INITIATED: 1) Request by parent or local division superintendent (or designee) within 10 days (30 days for 2(d)-tuition payment case) of receipt of school board's decision. 2) For a 2(d) case, the appeal must be accompanied by signed permission for the release of evaluations supporting the child's eligibility by the local school division to a State Hearing Officer. PROCEDURE: Due process hearing. See below.	Reg. §4.1.3/ 2.4
JUDICIAL REVIEW	OF: Decision of Board of Education. TO: State Court.	Reg. §4.1.31 2.4

DUE PROCESS PROVISIONS		INITIAL APPEAL NOTICE	INITIAL APPEAL PROCEDURE	SUBSEQUENT APPEAL NOTICE	SUBSEQUENT APPEAL PROCEDURE
PRE-HEARING	PRE-HEARING CONFERENCE with school officials				
	NOTICE OF:[1] (See also CONDUCT OF HEARING) See next page.				
	1. Specification of tests, instruments or reports on which proposed placement is based				
	2. Review and appeal procedures:				
	3. Names of: Members of Independent Evaluation Committee, and their positions	X		X	
	4. Statement of right to:				
	a. Independent evaluation				
	b. Inspect and copy relevant records	X		X	
	c. Compel attendance at hearing of witnesses				
	5. Exact time and place of hearing	X			
	OTHER: Steps shall be taken to assure that evaluation procedures which might have been instituted cease pending decision following initial & subsequent hearing.				
HEARING[2]	BEFORE: Initial Appeal Independent evaluation Committee composed of at least 5 members not employed by local school board and including; (See next page).		X		X
	WHEN: Within 20 days following notice of appeal.		X		
	CONDUCT OF HEARING:				
	1. Fair and Impartial		X		X
	2. Closed, unless open hearing is requested by: Re subsequent appeal - both parent and local superintendent or designee.		X		X
	3. Right of				
	a. Compel attendance of witnesses				
	b. Representation by: Including but not limited to legal counsel or other professional persons.	X	X	X	X
	c. Present evidence and testimony: Including expert testimony.	X	X	X	X
	d. Confront and cross-examine adverse witnesses		X		X
	e. Interpreters for deaf and/or fluent in primary language of home				X
	f. Attendance by minor child at option of parent except hearing officer may exclude or demand presence of child.				X
	4. Burden of proof on: As to the need for proposed evaluation will be upon party initiating appeal (Initial & Subs. Hearing), except in cases of Initial appeal of authorization for eval. by local school board following parental failure to respond, when burden of proof will be on local division superintendent.				
	5. Record of hearing: See next page.		X		X
	SCOPE OF REVIEW:				
	DECISION FOLLOWING HEARING: Independent Evaluation Committee makes written				
	1. Scope: Report of findings and recommendations to local school board which makes decision at next meeting.				
	a. Includes: Initial: findings and recommendations of Independent Evaluation Committee; Subsequent: facts, conclusions and reasons.	X	X		X
	b. Based solely on evidence and testimony presented at hearing		X		X
	2. Form: Sent within 5 days of school's board action (Initial); within 15 days of Subsequent hearing - certified mail.			X	
	3. Statement of rights sent with decision: Appeal procedures.	X		X	
	4. Other: Initial: maximum time for decision of school board is 2 regular meetings or 40 days, which ever is less; Subsequent: A summary of proceedings shall be made, including materials or statements requested by parties to appear in the record, & such summary shall be made available to the parties at hearing within 15 days.		X		
OTHER DUE PROCESS PROVISIONS					

Footnotes

[1] The notice requirements for Initial Appeal apply to the following categories set forth above under "Initial Appeal": 1)(a), 2)(a)-(c) For notice requirements of cat. 1(b) see the next page. There are no notice requirements specified for category 2(d). The notice requirements for Subsequent Appeal (See next page)

DUE PROCESS PROVISIONS

PRE-HEARING

NOTICE OF: Where the school appeals parent's failure to respond to the school's request for permission to evaluate (Category 1(b) on the preceding page), the local division may proceed with the evaluation of the child's special needs provided that the following conditions are met:

(1) The local division superintendent or his designee demonstrates by documentation that the local school division has repeatedly attempted to contact the parent through efforts that were likely to succeed; and

(2) The local division superintendent or his designee establishes through documentation of the child's performance that there is reasonable likelihood that the child will be found to have special needs in the child's present placement; and

(3) The local school board authorizes the local division superintendent or his designee to proceed with the evaluation; and

(4) The local school board provides notice to the parent that the evaluation is proceeding; and

(5) The local school board provides notice to the parent regarding the parental right to appeal within 10 days following receipt of notification of the local school board's authorization to proceed with testing following parental failure to respond by notifying the local school board in writing that an appeal is being initiated.

HEARING

BEFORE: (Continued)

(1) An educator certified and endorsed in the area of the handicapping condition of the child;

(2) A representative of another local school division having responsibility for the education of handicapped children;

(3) A representative of another local public agency having responsibility for handicapped children;

(4) A certified school psychologist; and

(5) Other appropriate personnel as deemed necessary, including a representative of the State school or agency providing services to similarly handicapped children.

Subsequent Appeal: Impartial hearing officer; person or tribunal of persons from a list maintained by the Executive Secretary of the State Supreme Court at the request of the Superintendent of Public Instruction from a list of approved hearing officers prepared by the Attorney General. Must be: Unbiased, disinterested, independent; not an officer or agent of the local school division or the State Department of Education.

5. Record of Hearing:

INITIAL - at public expense.

SUBSEQUENT - to be provided at reasonable cost within 15 days of request.

Footnotes (Continued)

[1] apply to all categories except 2(d) cases.

[2] Hearing requirements on Subsequent Appeal apply to all categories of cases, except 2(d) cases.

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART I: REFERRAL, EVALUATION AND PLACEMENT.

STATE: Washington	ADMINISTRATIVE PROVISION: Rules and Regulations for the Washington State Special Education Program for Children with Handicapping Conditions (July, 1973)	CITATION	REFERRAL	EVALUATION	PLACEMENT	OTHER
DUE PROCESS PROVISIONS		§392-45				
NOTICE to parent or guardian	I. OF: Referral - source and reason. WHEN: Prior to assessment. FORM: Primary language.	050	X			
	II. OF: Evaluation - A. Steps to take regarding: WHEN: Prior to evaluation. FORM: Primary language-interpretation if necessary. B. Results of evaluation.	050,130		X		
	III. OF: Placement - program plan.	120		X	X	
	IV. OF: School's exclusion of child from special education, following parent's request. WHEN: Within 10 days of decision to exclude. FORM: Certified mail or in person.	185				X
	ITEMS ON NOTICE:					
	1. Request parent: To decide whether to agree with findings, objectives and placement proposed.				X	
	2. Description of: a. Proposed or requested action, or decision: Referral; evaluation - steps in procedure & date of completion; goals & objectives in educational setting; results of evaluation; program plan.		X	A,B	X	
	b. Reasons for action or decision: Referral, denial of parent's request for special education.		X			X
	3. Names of persons responsible for: Referral.		X			
	4. Specification of tests, instruments or reports:					
	5. When action involves placement or denial of placement: a. Description of alternative educational placements					
	b. Reasons why such alternative placements are not appropriate for child					
	6. Statement that parents will be informed of results of:					
	7. Statement of opportunity/right to: a. Obtain independent evaluation					
	(1) At expense of:					
	(2) Names, addresses and telephone numbers of public agencies offering free evaluation					
	b. Meet and consult with school personnel concerning:					
	c. Participate in committee meetings regarding:					
	(1) Right to representation by:					
	8. Statement of right to: a. Refuse to consent to: School's decision to evaluate.			A		
	(1) However, LEA can request hearing to try to obtain approval					
	b. Inspect and copy relevant student records					
	c. Appeal by parent if parent disagrees with school's proposed placement, or if school denies parent's request for placement.				X	X
	d. Due process hearing, if parent objects to action -where school denies parent's request to place child.					X
	9. Description of: a. Procedures for objecting to action or appealing decision					
	b. Procedural rights at due process hearing:					
	c. Procedures for appealing decision resulting from due process hearing					X
	10. List of community agencies offering legal counsel for indigents					
	11. Declaration that child's educational status will not be changed without consent of parent, or until due process procedures have been exhausted					
	a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by:					
	12.					
CONSULTATION with parent or guardian						
CONSENT by parent or guardian	TO: Assessment and program placement.[1] FORM: Written.	392-45-035;060		X		
OTHER AREAS of parental involvement or rights						

Footnotes [1] See above under NOTICE.

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART II: APPEAL.

STATE: Washington — ADMINISTRATIVE PROVISION: Rules and Regulations for the Washington State Special Education Program for Children with Handicapping Conditions (July 1973)

STAGES OF APPEAL		CITATION
INITIAL APPEAL	REGULATORY CATEGORY: A. Appeal by parent of child's exclusion from special education program. WHEN: Within 30 days of notice of exclusion. B. Appeal by child, person making referral, or by other person involved in child's care, of parent's decision re assessment, program development and placement. C. Petition by parent to superintendent of public instruction for funds to provide special educational program in another state or in Canada, where resident school district is unable to make provision for child (including by contract with another school).	392-45-185 392-45-124 392-45-175
SUBSEQUENT APPEAL	OF: Local school board's decisions. TO: Superintendent of public instruction. WHEN: Within 30 days of notice of decision. PROCEDURE: Unspecified.	392-45-185(6)
JUDICIAL REVIEW	OF: Decision by superintendent of public instruction. TO: Superior court.	392-45-185(6)

DUE PROCESS PROVISIONS		INITIAL APPEAL NOTICE	INITIAL APPEAL PROCEDURE	SUBSEQUENT APPEAL NOTICE	SUBSEQUENT APPEAL PROCEDURE
PRE-HEARING	PRE-HEARING CONFERENCE with school officials				
	NOTICE OF: (See also CONDUCT OF HEARING) 1. Specification of tests, instruments or reports on which proposed placement is based				
	2. Review and appeal procedures:				
	3. Names of witnesses		X		
	4. Statement of right to: a. Independent evaluation				
	b. Inspect and copy relevant records including all affidavits, exhibits, or evidence available to school authorities		X		
	c. Compel attendance at hearing of witnesses				
	5. Exact time and place of hearing				
	OTHER:				
HEARING	BEFORE: Local school district board of directors.		X		
	WHEN: At next board meeting or at special board meeting- maximum 20 days after receipt of request.		X		
	CONDUCT OF HEARING: In compliance with state administrative procedures act. 1. Fair and impartial		X		
	2. Closed, unless open hearing is requested by :				
	3. Right of a. Compel attendance of witnesses		X		
	b. Representation by: Counsel		X		
	c. Present evidence and testimony		X		
	d. Confront and cross-examine adverse witnesses		X		
	e. Interpreters for deaf and/or fluent in primary language of home				
	f. Attendance by minor child at option of parent				
	4. Burden of proof on:				
	5. Record of hearing: Tape recorded or verbatim.		X		
	SCOPE OF REVIEW:				
	DECISION FOLLOWING HEARING: 1. Scope:				
	a. Includes:				
	b. Based solely on evidence and testimony presented at hearing				
	2. Form: Written findings maximum 10 days after hearing - certified mail or delivered in person.	X	X		
	3. Statement of rights sent with decision:				
	4. Other:				
OTHER DUE PROCESS PROVISIONS					

Footnotes

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART I: REFERRAL, EVALUATION AND PLACEMENT.

STATE: West Virginia — ADMINISTRATIVE PROVISION: State Plan Amendment EHA Title VI - Part B (May 1975)	CITATION	REFERRAL	EVALUATION	PLACEMENT	OTHER
DUE PROCESS PROVISIONS					
NOTICE to parent or guardian I. OF: Evaluation: procedures re and results of. II. OF: Placement: Proposed change in child's placement or denial of parent's request for different placement. WHEN: Within 10 calendar days prior to proposed action. FORM: Certified mail. English and primary language of home and orally, in primary language of home.	§C.1.b,d A.1.		X	X	
ITEMS ON NOTICE: 1. Request parent:					
2. Description of: a. Proposed or requested action, or decision: Evaluation - procedures re: results of; placement or denial of parent's request for different placement.			X	X	
b. Reasons for action or decision				X	
3. Names of persons responsible for:					
4. Specification of tests, instruments or reports: Proposed placement or denial.				X	
5. When action involves placement or denial of placement: a. Description of alternative educational placements					
b. Reasons why such alternative placements are not appropriate for child				X	
6. Statement that parents will be informed of results of:					
7. Statement of opportunity/right to: a. Obtain independent evaluation				X	
(1) At expense of:					
(2) Names, addresses and telephone numbers of public agencies offering free evaluation; also of private agencies.				X	
b. Meet and consult with school personnel concerning: Placement				X	
c. Participate in committee meetings regarding:					
(1) Right to representation by:					
8. Statement of right to: a. Refuse to consent to:					
(1) However, LEA can request hearing to try to obtain approval					
b. Inspect and copy relevant student records				X	
c. Appeal					
d. Due process hearing, if parent objects to action				X	
9. Description of: a. Procedures for objecting to action or appealing decision					
b. Procedural rights at due process hearing:					
c. Procedures for appealing decision resulting from due process hearing					
10. List of community agencies offering legal counsel for indigents				X	
11. Declaration that child's educational status will not be changed without consent of parent, or until due process procedures have been exhausted				X	
a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by: County superintendent of schools.				X	
12. Other: If there is any reason to believe that parents may not understand written notice, school shall take steps to assure communication				X	
CONSULTATION with parent or guardian					
CONSENT by parent or guardian					
OTHER AREAS of parental involvement or rights					
Footnotes					

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART II: APPEAL.

STATE: West Virginia ADMINISTRATIVE PROVISION: State Plan Amendment EHA Title VI - Part B (May 1975)

STAGES OF APPEAL		CITATION
INITIAL APPEAL	REGULATORY CATEGORY: Hearing requested by parent objecting to proposed change in educational placement. See Below.	Procedural Safeguards
SUBSEQUENT APPEAL	OF: Decision of county board of education. UNDER: Administrative process.	Procedural Safeguards
JUDICIAL REVIEW	OF: County board of education's decision. TO: Subject to judicial appeal.	Procedural Safeguards

DUE PROCESS PROVISIONS		INITIAL APPEAL		SUBSEQUENT APPEAL	
		NOTICE	PROCEDURE	NOTICE	PROCEDURE
PRE-HEARING	PRE-HEARING CONFERENCE with school officials to discuss question re placement change.		X		
	NOTICE OF: (See also CONDUCT OF HEARING)				
	1. Specification of tests, instruments or reports on which proposed placement is based				
	2. Review and appeal procedures:				
	3. Names of:				
	4. Statement of right to:				
	a. Independent evaluation- must list public agencies with minimum or no cost		X		
	b. Inspect and copy relevant records		X		
	c. Compel attendance at hearing of witnesses		X		
	5. Exact time and place of hearing	X			
	OTHER:				
HEARING	BEFORE: County board of education or its impartial designee.		X		
	WHEN: 15-45 days after receipt of request for hearing.		X		
	CONDUCT OF HEARING:				
	1. Fair and Impartial				
	2. Closed, unless open hearing is requested by : Parents.		X		
	3. Right of				
	a. Compel attendance of witnesses		X		
	b. Representation by: Counsel or other professional person or others.		X		
	c. Present evidence and testimony		X		
	d. Confront and cross-examine adverse witnesses		X		
	e. Interpreters for deaf and/or fluent in primary language of home		X		
	f. Attendance by minor child at option of parent except board of education may exclude if attendance found harmful.		X		
	4. Burden of proof on: School personnel recommending placement, as to appropriateness of proposed placement, and appropriateness and adequacy of test or evaluation procedure?				
	5. Record of hearing: School responsible for providing.	X			
	SCOPE OF REVIEW:				
	DECISION FOLLOWING HEARING:				
	1. Scope: Includes statement of what is adequate and appropriate educational program.		X		
	a. Includes: Facts, conclusions and reasons for each.		X		
	b. Based solely on evidence and testimony presented at hearing		X		
	2. Form: Sent by certified mail within 30 days of decision.	X			
	3. Statement of rights sent with decision:				
	4. Other: Hearing may be continued or rescheduled if insufficient material to make decisions. Request additional information or briefs.		X		
OTHER DUE PROCESS PROVISIONS	Steps should be taken to assure that child remains in present placement pending decision following hearing, except county superintendent may order change pending hearing if emergency.		X		

Footnotes

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART I: REFERRAL, EVALUATION AND PLACEMENT.

STATE: Wisconsin	ADMINISTRATIVE PROVISION: Rules Implementing Subchapter IV of Chapter 115, Wisconsin Stats. (December 1975)	CITATION C.PI.11	REFERRAL	EVALUATION	PLACEMENT	OTHER
DUE PROCESS PROVISIONS						
NOTICE to parent or guardian	I. OF: Referral. WHEN: Prior to referral. FORM: Manner in which parent was informed must be documented in writing.	11.02b (1)(5)	X			
	II. OF: Evaluation - findings and recommendations following team's examination	11.03 (4),(10)		X		
	III. OF: Placement decisions.	11.03 (6),(11)			X	
	ITEMS ON NOTICE: 1. Request parent:					
	2. Description of: a. Proposed or requested action, or decision: Referral and also notice that report of referral will be sent to board; recommendations follow evaluation.		X	X		
	b. Reasons for action or decision: Additional time required to complete assessment; recommendations following evaluation.			X	X	
	3. Names of persons responsible for:					
	4. Specification of tests, instruments or reports:					
	5. When action involves placement or denial of placement: a. Description of alternative educational placements					
	b. Reasons why such alternative placements are not appropriate for child					
	6. Statement that parents will be informed of results of: Findings and recommendations concerning child following examination of non-school records			X		
	7. Statement of opportunity/right to: a. Obtain independent evaluation					
	(1) At expense of:					
	(7) Names, addresses and telephone numbers of public agencies offering free evaluation					
	b. Meet and consult with school personnel concerning:					
	c. Participate in committee meetings regarding:					
	(1) Right to representation by:					
	8. Statement of right to: a. Refuse to consent to:					
	(1) However, LEA can request hearing to try to obtain approval					
	b. Inspect and copy relevant student records					
	c. Appeal					
	d. Due process hearing, if parent objects to action					
	9. Description of: a. Procedures for objecting to action or appealing decision					
	b. Procedural rights at due process hearing:					
	c. Procedures for appealing decision resulting from due process hearing					
	10. List of community agencies offering legal counsel for indigents					
	11. Declaration that child's educational status will not be changed without consent of parent, or until due process procedures have been exhausted					
	a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by:					
	12. Other:					
CONSULTATION with parent or guardian	I. RE: Entire team evaluation process.[1] Parents may have child advocate accompany them.	PI11.03(4)		X		
	II. RE: Communication of findings & possible special education program or service alternatives upon completion of team evaluation.[1]	PI11.03(7)			X	
CONSENT by parent or guardian	I. TO: Referral to multidisciplinary team from both public and private school.[1]	PI11.03(2)	X			
	II. TO: Any action taken by team.[1] WHEN: Prior to action. FORM: Written.	PI11.03(4)		X		II
	III. TO: Extension of time beyond 90 days to complete evaluation.[1] FORM: Written.	PI11.03(6)			X	
	IV. TO: Placement.[1] WHEN: Prior to placement.	PI11.04(1)				
OTHER AREAS of parental involvement or rights		PI11.03(9)				
Footnotes	[1] Parents are not provided notice of this right.					

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART II: APPEAL.

STATE: Wisconsin ADMINISTRATIVE PROVISION: Rules Implementing Subchapter IV of Chapter 115, Wis. Stats. (December, 1975)

STAGES OF APPEAL		CITATION chapter
INITIAL APPEAL	REGULATORY CATEGORY: Hearing to resolve conflicts over decision re special education.	PI11.06
SUBSEQUENT APPEAL	OF: Board's decision. TO: Superintendent of public instruction. HOW INITIATED: Written appeal naming parties and reasons for appeal; sent within 30 days of issuance of board's decision. PROCEDURE: Superintendent shall review official record and issue a decision based on the record within 30 days after parent has filed written appeal. If superintendent does not make a decision within 30 days, board decision shall be affirmed.	PI11.06 (4)
JUDICIAL REVIEW	OF: Decision of superintendent. TO: Circuit or county court. WHEN: Within 30 days of issuance of board's decision.	PI11.06 (11)

DUE PROCESS PROVISIONS		INITIAL APPEAL NOTICE	INITIAL APPEAL PROCEDURE	SUBSEQUENT APPEAL NOTICE	SUBSEQUENT APPEAL PROCEDURE
PRE-HEARING	PRE-HEARING CONFERENCE with school officials				
	NOTICE OF: (See also CONDUCT OF HEARING)				
	1. Specification of tests, instruments or reports on which proposed placement is based				
	2. Review and appeal procedures:				
	3. Names of:				
	4. Statement of right to:				
	a. Independent evaluation				
	b. Inspect and copy relevant records				
	c. Compel attendance at hearing of witnesses				
	5. Exact time and place of hearing sent not more than 30 days prior to time set for hearing	X			
	OTHER:				
HEARING	BEFORE: Hearing officer appointed by school board.		X		
	WHEN: Within 60 days of parent's filing of request for hearing.		X		
	CONDUCT OF HEARING:				
	1. Fair and Impartial				
	2. Closed, unless open hearing is requested by :				
	3. Right of				
	a. Compel attendance of witnesses				
	b. Representation by: Advocate.		X		
	c. Present evidence and testimony		X		
	d. Confront and cross-examine adverse witnesses		X		
	e. Interpreters for deaf and/or fluent in primary language of home				
	f. Attendance by minor child at option of parent				
	4. Burden of proof on:				
	5. Record of hearing: Shall contain verbatim record of proceeding & exhibits; copy of all notices sent to parent & all parental consent forms; report of independent examination results.		X		
	SCOPE OF REVIEW:				
	DECISION FOLLOWING HEARING: Report by hearing officer sent to Board				
	1. Scope: within 10 days of hearing, summarizing points of contention, reviewing & recommending decision. Copy sent to parent. Board then issues decision.	X	X		
	a. Includes: Facts and conclusions on which Board's decision was made.		X		
	b. Based solely on evidence and testimony presented at hearing				
	2. Form: Mailed to parent within 24 hours of Board's decision.	X			
	3. Statement of rights sent with decision: Appeal to superintendent within 30 days of issuance of decision.		X		
	4. Other:				
OTHER DUE PROCESS PROVISIONS	Program change without parental consent shall be made only if health or safety of child or others would be endangered by delaying change.		X		

Footnotes

DUE PROCESS IN SPECIAL EDUCATION: STATE ADMINISTRATIVE PROVISIONS. PART I: REFERRAL, EVALUATION AND PLACEMENT.

STATE: Wyoming	ADMINISTRATIVE PROVISION: Rules and Regulations Covering Programs and Services for Handicapped Children in Wyoming School Districts (April 1975)	CITATION	REFERRAL	EVALUATION	PLACEMENT	OTHER
DUE PROCESS PROVISIONS						
NOTICE to parent or guardian	OF:					
	ITEMS ON NOTICE:					
	1. Request parent:					
	2. Description of:					
	a. Proposed or requested action, or decision:					
	b. Reasons for action or decision					
	3. Names of persons responsible for:					
	4. Specification of tests, instruments or reports:					
	5. When action involves placement or denial of placement:					
	a. Description of alternative educational placements					
	b. Reasons why such alternative placements are not appropriate for child					
	6. Statement that parents will be informed of results of:					
	7. Statement of opportunity/right to:					
	a. Obtain independent evaluation					
	(1) At expense of:					
	(2) Names, addresses and telephone numbers of public agencies offering free evaluation					
	b. Meet and consult with school personnel concerning:					
	c. Participate in committee meetings regarding:					
	(1) Right to representation by:					
	8. Statement of right to:					
	a. Refuse to consent to:					
	(1) However, LEA can request hearing to try to obtain approval					
	b. Inspect and copy relevant student records					
	c. Appeal					
	d. Due process hearing, if parent objects to action					
	9. Description of:					
	a. Procedures for objecting to action or appealing decision					
	b. Procedural rights at due process hearing:					
	c. Procedures for appealing decision resulting from due process hearing					
	10. List of community agencies offering legal counsel for indigents					
	11. Declaration that child's educational status will not be changed without consent of parent, or until due process procedures have been exhausted					
	a. Exception: where health/safety of child or others would be endangered by continuing present placement, change in placement may be ordered by:					
	12. Other:					
CONSULTATION with parent or guardian	I. RE: Suggested that parents be fully involved in decisions concerning need for and provision of special services.[1]	C.XI§3f, 6c.				X
	II. RE: Interpretation of assessment.[1]			X		
CONSENT by parent or guardian	I. TO: Child assessment and other special services and instructional programs. School district must adopt regulations and procedures concerning. Must be written.[1]	C.XI.§3a,		X		
	II. TO: Placement. FORM: Written. WHEN: Prior to placement.[1]	CXII,§1b.			X	
OTHER AREAS of parental involvement or rights						
Footnotes	[1] Parents are not provided notice of this right.					

STATE: Wyoming — ADMINISTRATIVE PROVISION: Rules and Regulations Covering Programs and Services for Handicapped Children in Wyoming School Districts (April 1975)

STAGES OF APPEAL		CITATION
INITIAL APPEAL	REGULATORY CATEGORY: Opportunity for impartial due process hearing initiated by parent dissatisfied with school decision or by school where parents refuse to cooperate with district recommendations. PROCEDURE: In accordance with Wyoming Administrative Procedure Act - school district shall adopt regulations pursuant to this Act.	C.XI. §3 c. Appendix B.
SUBSEQUENT APPEAL		
JUDICIAL REVIEW	OF: Decisions of Board. TO: District Court, in manner prescribed by Administrative Procedure Act.	Appendix, B, §24.

DUE PROCESS PROVISIONS		INITIAL APPEAL NOTICE	INITIAL APPEAL PROCEDURE	SUBSEQUENT APPEAL NOTICE	SUBSEQUENT APPEAL PROCEDURE
PRE-HEARING	PRE-HEARING CONFERENCE with school officials before Board to simplify issues, amend pleadings, obtain admission of fact.		X		
	NOTICE OF: (See also CONDUCT OF HEARING)				
	1. Specification of tests, instruments or reports on which proposed placement is based				
	2. Review and appeal procedures: Legal authority and jurisdiction under which hearing is held.	X			
	3. Names of:				
	4. Statement of right to:				
	a. Independent evaluation				
	b. Inspect and copy relevant records				
	c. Compel attendance at hearing of witnesses				
	5. Exact time and place of hearing	X			
	OTHER: A memorandum of the prehearing conference will be prepared which covers all agreements made. The mem. will control the course of hearing unless modified by the Board		X		
HEARING	BEFORE: Presiding officer, Board of Trustees, one or more members of Board, or employee or other party designated by Board.		X		
	WHEN:				
	CONDUCT OF HEARING:				
	1. Fair and Impartial		X		
	2. Closed, unless open hearing is requested by:				
	3. Right of				
	a. Compel attendance of witnesses		X		
	b. Representation by: Attorney.		X		
	c. Present evidence and testimony		X		
	d. Confront and cross-examine adverse witnesses		X		
	e. Interpreters for deaf and/or fluent in primary language of home				
	f. Attendance by minor child at option of parent				
	4. Burden of proof on:				
	5. Record of hearing: Transcribed on request of party upon payment of cost.		X		
	SCOPE OF REVIEW:				
	DECISION FOLLOWING HEARING:				
	1. Scope: Vote of Board must show in decision		X		
	a. Includes: Facts and conclusions of law.		X		
	b. Based solely on evidence and testimony presented at hearing including all matters officially noticed.		X		
	2. Form: Sent by certified mail.	X			
	3. Statement of rights sent with decision:				
	4. Other:				
OTHER DUE PROCESS PROVISIONS					

Footnotes